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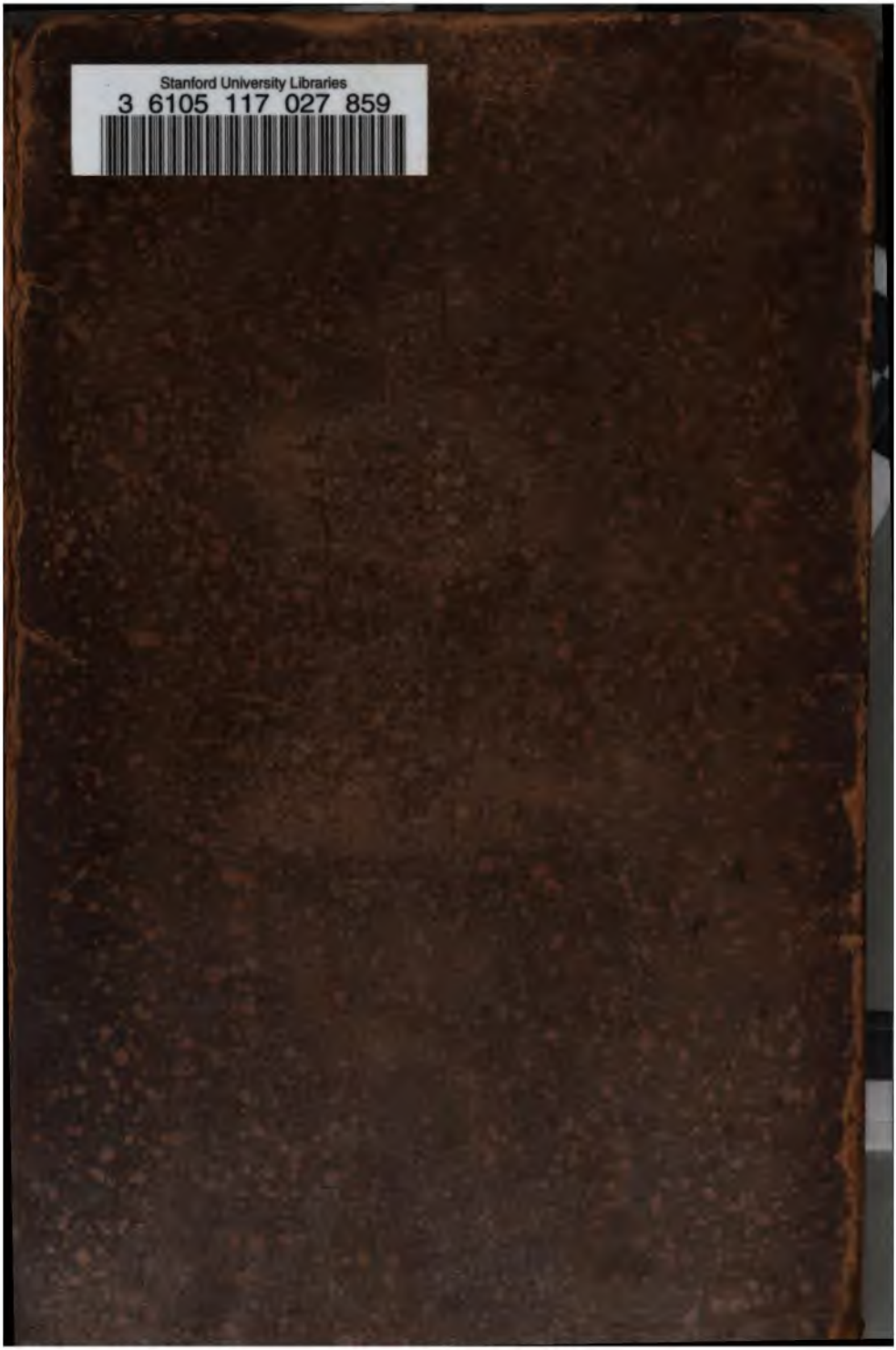
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THE GIFT OF

Mrs. William Dinsmore Briggs

TO THE

~~English Department~~ of

STANFORD UNIVERSITY

MORAL AND POLITICAL DIALOGUES;

WITH

LETTERS ON CHIVALRY AND ROMANCE:

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NOW LORD BISHOP OF WORCESTER.

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DIALOGUE IV.

On the Age of Queen ELIZABETH.

MR. DIGBY, DR. ARBUTHNOT, MR. ADDISON.

BUT do you conſider, ſaid Mr. ADDISON, as they deſcended into the valley, what an invidious taſk you are going to impoſe upon me? One cannot call in queſtion a common opinion in any indifferent matter, without the appearance of ſome degree of perverſeneſs. But to do it in a caſe of this importance, where the greateſt authorities ſtand in the way, and the glory of one of our princes is concerned, will, I doubt, be liable to the imputation of ſomething worſe than ſingularity. For, beſides that you will be apt to upbraid me, in the words of the poet,

Nullum memorabile nomen
Fœmineâ in pœnâ eſt, nec habet victoria laudem,

ſuch a liberty of cenſure is uſually taken for an argument, not of diſcourteſy or preſumption only, but of ill-nature. At beſt, the attempt to arraign the virtues and government of ELIZABETH will appear but like the idleneſs of the old ſophiſts, who, you know, were never ſo well pleaſed as when they were controverting ſome acknowledged fact, or aſſaulting ſome eſtabliſhed character.

THAT cenſure might be juſt enough, Dr. ARBUTHNOT ſaid, of the old ſophiſts, who had nothing in view but the credit of their own ſkill in the arts of diſputation. But in this friendly debate, which means nothing more than private amuſement, I ſee no colour for ſuch apprehenſions.

BUT what ſhall we ſay, interpoſed Mr. ADDISON, to another difficulty? The

ſubject is very large; and it ſeems no eaſy matter to reduce it into any diſtinct order. Beſides, my buſineſs is not ſo much to advance any thing of my own, as to object to what others have advanced concerning the fame and virtues of ELIZABETH. And to this end, I muſt deſire to know the particulars on which you are diſpoſed to lay the greateſt ſtreſs, and indeed to have ſome plan of the ſubject delivered in to me, which may ſerve, as it were, for the ground-work of the whole converſation.

I MUST not preſume, ſaid Dr. ARBUTHNOT, to preſcribe the order in which your attack on the great queen ſhall be conducted. The ſubject, indeed, is large. But this common route of hiſtory is well known to all of us. To that, then, you may well enough refer, without being at the trouble, before you go to work, of laying foundations. Or, if you will needs have a baſis to build

upon, what if I juſt run over the ſeveral circumſtances which I conceive to make moſt for the credit of that reign? A ſketch of this ſort, I ſuppoſe, will anſwer all the ends of the plan, you ſeem to require of me.

MR. ADDISON agreed to this propoſal; which he thought would be of uſe to ſhorten the debate, or at leaſt to render the progreſs of it more clear and intelligible.

IN few words then, reſumed Dr. ARBUTHNOT, the reaſons, that have principally determined me to an admiration of the government and character of queen ELIZABETH, are ſuch as theſe: "That ſhe came to the crown with all poſſible diſadvantages; which yet, by the prudence and vigour of her counſels, ſhe entirely overcame: that ſhe triumphed over the greateſt foreign and domeſtic dangers: that ſhe humbled the moſt formidable

midable power in *Europe* by her arms; and compoſed, or checked at leaſt, by the firmneſs of her adminiſtration, two, the moſt implacable and firey factions at home: that ſhe kept down the rebellious ſpirit of *Ireland*, and eluded the conſtant intrigues of her reſtleſs neighbours, the *Scots*: that ſhe fixed our religious eſtabliſhment on ſolid grounds; and countenanced, or rather conducted, the Proteſtant cauſe abroad: that ſhe made her civil authority reſpected by her ſubjects; and raiſed the military glory of the nation, both by ſea and land, to the greateſt height: that ſhe employed the ableſt ſervants, and enacted the wiſeſt laws: by all which means it came to paſs that ſhe lived in a conſtant good underſtanding with her parliaments, was idolized by her people, and admired and envied by all the reſt of the world."

Alas, ſaid Mr. Addison, I ſhall never be able to follow you through all the

particulars of this encomium: and, to ſay the truth, it would be to little purpoſe; ſince the wiſdom of her policy, in all theſe inſtances of her government, can only be eſtimated from a careful peruſal of the hiſtories of that time; too numerous and contradictory to be compared and adjuſted in this converſation. All I can do, continued he, after taking a moment or two to recollect himſelf, is to abate the force of this panegyric by ſome general obſervations of the CIRCUMSTANCES and GENIUS of that time; and then to conſider the perſonal QUALITIES of the queen, which are thought to reflect ſo great a luſtre on her government.

As you pleaſe, DR. ARBUTHNOT replied. We ſhall hardly loſe ourſelves in this beaten field of hiſtory. And, beſides, as your undertaking is ſo adventurous, it is but reaſonable you ſhould have the choice of your own method.

You

You are in the common opinion, I perceive, reſumed Mr. Addison, that Elizabeth's government was attended with all poſſible diſadvantages. On the contrary, it appears to me that the ſecurity and even ſplendour of her reign is chiefly to be accounted for from the fortunate circumstances of her ſituation.

Of theſe the first, that demands our notice, is the great affair of religion.

The principles of Protestantism had now for many years been working among the people. They had grown to that head in the ſhort reign of Edward VI, that the bloody ſeverities of his ſucceſſor ſerved only to exaſperate the zeal, with which theſe principles had been embraced and promoted. Elizabeth, coming to the crown at this juncture, was determined, as well by intereſt as inclination, to take the ſide of

the new religion. I ſay by *intereſt*, as well as inclination. And, I think, I have reaſon for the aſſertion. For though the perſons in power, and the clergy throughout the kingdom, were generally profeſſed papiſts; yet they were moſt of them ſuch as had conformed in king EDWARD's days, and were not therefore much to be feared for any tie, their *profeſſion* could really have on their conſciences. Whereas, on the other hand, it was eaſy to ſee, from many ſymptoms, that the general bent of the nation was towards Proteſtantiſm; and that, too, followed with a ſpirit, which muſt in the end prevail over all oppoſition. Under theſe circumſtances, then, it was natural for the queen, if ſhe had not been otherwiſe led by her principles, and the intereſt of her title, to favour the Reformation.

THE truth is, ſhe came into it herſelf ſo heartily, and provided ſo effectually

for its eſtabliſhment, that we are not to wonder ſhe became the idol of the Reformed, at the ſame time that the papal power through all *Europe* was confederated againſt her. The enthuſiaſm of her Proteſtant ſubjects was prodigious. It was raiſed by other conſiderations; but confirmed in all orders of the ſtate by the eaſe they felt in their deliverance from the tyranny of the church; and in the great eſpecially, by the ſweets they taſted in their enjoyment of the church-revenues. It was, in ſhort, one of thoſe extraordinary conjunctures, in which the public danger becomes the public ſecurity; when religion and policy, conſcience and intereſt, unite their powers to ſupport the authority of the prince, and to give fidelity, vigour, and activity, to the obedience of the ſubject.

And thus it was, continued he, that ſo warm and unconquerable a zeal appeared in defence of the queen againſt all

all attempts of her enemies. Her people were ſo thoroughly Proteſtant, as to think no expence of her government too great, provided they could but be ſecured from relapſing into Popery. And her parliaments were diſpoſed to wave all diſputes about the ſtretch of her prerogative, from a ſenſe of their own and the common danger.

In magnifying this advantage of the zeal and union of ELIZABETH's good ſubjects, you forgot, ſaid Dr. ARBUTHNOT, that two reſtleſs and inveterate factions were contending, all her life-time, within her own kingdom.

I am ſo far from forgetting that circumſtance, returned Mr. ADDISON, that I eſteem it ANOTHER of the great advantages of her ſituation.

The contrary tendencies of thoſe factions in ſome reſpects defeated each other.

other. But the principal uſe of them was, that, by means of their practices, ſome domeſtic plot, or foreign alarm, was always at hand, to quicken the zeal and inflame the loyalty of her people. But to be a little more particular about the factions of her reign.

THE PAPIST was, in truth, the only one ſhe had reaſon to be alarmed at. The PURITAN had but juſt begun to ſhew himſelf, though indeed with that ferocity of air and feature, which ſignified clearly enough what ſpirit he was of, and what, in good time, he was likely to come to. Yet even he was kept in tolerable humour, by a certain commodious policy of the queen; which was, ſo to divide her regards betwixt the Church and the Puritans, as made it the intereſt of both to keep well with her. 'Tis true, theſe laſt felt the weight of her reſentment ſometimes, when they ventured too ſawcily to oppoſe themſelves to the eſtabliſhment.

eſtabliſhment. But this was rarely, and by halves: and, when checked with the moſt rigour, they had the ſatisfaction to ſee their patrons continue in the higheſt places at court, and, what is more, in the higheſt degree of perſonal favour.

And what doth all this ſhew, interrupted Dr. Arbuthnot, but that ſhe managed ſo well as to diſarm a furious faction, or rather make it ſerve againſt the bent of its nature, to the wiſe ends of her government?

As to any wiſe ends of government, I ſee none, replied Mr. Addison, deſerving to be ſo called, that were anſwered by her uncertain conduct towards the Puritans. For ſhe neither reſtrained them with that ſeverity, which might perhaps have prevented their growth, at firſt; nor ſhewed them that entire indulgence, which might have diſabled their fury afterwards. It is true, this temporizing

temporizing conduct was well enough adapted to prevent diſturbances in her own time. But large materials were laid in for that terrible combuſtion, which was ſoon to break forth under one of her ſucceſſors.

And ſo, inſtead of imputing the diſaſters that followed, ſaid Dr. Arbuthnot, to the ill-government of the Stuarts, you are willing to lay the whole guilt of them on this laſt and greateſt of the Tudors. This is a new way of defending that royal houſe; and, methinks, they owe you no ſmall acknowledgments for it. I confeſs, it never occurred to me to make that apology for them.

Though I would not undertake, ſaid Mr. Addison, to make their apology from this, or any other, circumſtance; I do indeed believe that part of the difficulties the houſe of Stuart had to encounter, were brought upon them by this

this wretched policy of their predeceſſor. But, waving this conſideration, I deſire you will take notice of what I chiefly inſiſt upon, "That the eaſe and ſecurity of ELIZABETH's adminiſtration was even favoured by the turbulent practices and claſhing views of her domeſtic factions." The PURITAN was an inſtrument, in her hands, of controuling the church, and of balancing the power of her miniſters: beſides that this ſort of people were, of all others, the moſt inveterate againſt the common enemy. And for the PAPISTS themſelves (not to inſiſt that, of courſe, they would be ſtrictly watched, and that they were not, perhaps, ſo conſiderable as to create any immediate danger [*a*]), the general abhorrence both of their

[*a*] This will be admitted, if a calculation ſaid to have been made by themſelves of their number at that time may be relied on—"They make reaſoning (ſaith Sir EDWIN SANDYS in his *Speculum Europæ*, written in 1699) forty hundred ſure catholics in *England*, with four hundred *Engliſh Roman* prieſts to maintain that militia," p. 157.

principles

principles and deſigns had the greateſt effect in uniting more cloſely, and cementing, as it were, the affections of the reſt of her ſubjects. So that, whether within or without, the common danger, as I expreſſed it, was the common ſafety.

STILL, ſaid Dr. ARBUTHNOT, I muſt think this a very extraordinary concluſion. I have no idea of the ſecurity of the great queen, ſurrounded, as ſhe was, by her domeſtic and foreign enemies.

HER foreign enemies, returned Mr. ADDISON, were leſs formidable than they appear at firſt view. And I even make the condition of the neighbouring powers on the continent, in her time, a THIRD inſtance of the ſignal advantages of her ſituation.

IT is true, if a perfect union had ſubſiſted between the Catholic princes, the papal thunders would have carried terror with

with them. But, as it was, they were powerleſs and ineffectual. The civil wars of *France*, and its conſtant jealouſy of *Spain*, left the queen but little to apprehend from that quarter. The *Spaniſh* empire, indeed, was vaſt, and under the direction of a bigoted vindictive prince. But the adminiſtration was odious and corrupt in every part. So that wiſe men ſaw there was more of bulk than of force in that unwieldy monarchy. And the ſucceſsful ſtruggles of a handful of its ſubjects, inflamed by the love of liberty, and made furious by oppreſſion, proclaimed its weakneſs to all the world.

It may be true, interrupted Dr. Arbuthnot, that the queen had leſs to fear from the princes on the continent, than is ſometimes repreſented. But you forget, in this ſurvey of the public dangers, the diſtractions of Ireland, and the reſtleſs intrigues of her near neighbours, the Scots: both of them aſſiſted by

by *Spain*; and theſe laſt under the peculiar influence and direction of the GUISES.

YOU ſhall have my opinion, returned Mr. ADDISON, in few words.

FOR the IRISH diſtractions, it was not the queen's intention, or certainly it was not her fortune, to compoſe them: I mean, during the greateſt part of her reign; for we are now ſpeaking of the general tenor of her policy. Towards the cloſe of it, indeed, ſhe made ſome vigorous attempts to break the ſpirits of thoſe ſavages. And it was high time ſhe ſhould. For, through her faint proceedings againſt them, they had grown to that inſolence, as to think of ſetting up for an independency on *England*. Nay, the preſumption of that arch-rebel TYRONE, countenanced and abetted by *Spain*, ſeemed to threaten the queen with ſtill further miſchiefs. The extreme diſ-

honour and even peril of this ſituation rouſed her old age, at length, to the reſolution of taking ſome effectual meaſures. The preparation was great, and ſuitable to the undertaking. It muſt, further, be owned, it ſucceeded; but ſo late, that ſhe herſelf did not live to ſee the full effect of it. However, this ſucceſs is reckoned among the glories of her reign. In the mean time, it is not conſidered that nothing but her ill policy, in ſuffering the diſorders of that country to gather to a head, made way for this glory. I call it her *ill policy*, for unleſs it were rather owing to her exceſſive frugality [*b*] one can hardly help thinking

[*b*] M. CAMDEN owns that the *Iriſh* rebellion, which in the end became ſo dangerous, had been "encouraged by a ſlighting of it, and a gripple-handedneſs of *England*." [*Hiſt. of* ELIZ. B. iv.]—To the ſame purpoſe another eminent writer of that time—"Before the tranſmitting of the laſt great army, the forces ſent over by Q. ELIZABETH were NOT of ſufficient power to break and ſubdue all the *Iriſhry*." At laſt, however, "The extreme peril

ing ſhe deſigned to perpetuate the *Iriſh* diſtractions. At leaſt, it was agreeable to a favourite maxim of hers, to check, and not to ſuppreſs them. And I think it clear, from the manner of proſecuting the war, that, till this laſt alarm, ſhe never was in earneſt about putting an end to it.

SCOTLAND, indeed, demanded a more ſerious attention. Yet the weak diſtracted counſels of that court—a minor king—a captive queen—and the unſettled ſtate of *France* itſelf, which defeated in a good degree the malice of the GUISES—were favourable circumſtances.

peril of loſing the kingdom; the diſhonour and danger that might thereby grow to the crown of *England*; together with a juſt diſdain conceived by that great-minded queen, that ſo wicked and ungrateful a rebel ſhould prevail againſt her, who had ever been victorious againſt all her enemies; did move and almoſt ENFORCE her to ſend over that mighty army." [Sir J. DAVIES, *Diſcovery of the State of Ireland*, p. 97. *Lond.* 1613.]

BUT to be fair with you (for I would appear in the light of a reaſonable objector, not a captious wrangler); I allow her policy in this inſtance to have been conſiderable. She kept a watchful eye on the ſide of *Scotland*. And, though many circumſtances concurred to favour her deſigns, it muſt be owned they were not carried without much care and ſome wiſdom.

I UNDERSTAND the value of this conceſſion, replied Dr. ARBUTHNOT. It muſt have been no common degree of both, that extorted it from you.

I DECLINE entering further, ſaid Mr. ADDISON, into the public tranſactions of that reign; if it were only that, at this diſtance of time, it may be no eaſy matter to determine any thing of the policy, with which they were conducted. Only give me leave to add, as a FOURTH inſtance

ſtance of the favourable circumſtances of the time, "That the prerogative was then in its height, and that a patient people allowed the queen to uſe it on all occaſions." Hence the apparent vigour and firmneſs of her adminſtration: and hence the opportunity (which is ſo rarely found in our country) of directing the whole ſtrength of the nation to any end of government, which the glory of the prince or the public intereſt required.

WHAT you impute to the high ſtrain of prerogative, returned Dr. ARBUTHNOT, might rather be accounted for from the ability of her government, and the wiſe means ſhe took to ſupport it. The principal of theſe was, by employing the GREATEST MEN in the ſeveral departments of her adminiſtration. Every kind of merit was encouraged by her ſmile [c], or

[c] Sir ROBERT NAUNTON tells us, "The queen was never profuſe in delivering out of her treaſure; but paid her ſervants part in money, and

or rewarded by her bounty. Virtue, ſhe knew, would thrive beſt on its native ſtock, a generous emulation. This ſhe promoted by all means; by her royal countenance, by a temperate and judicious praiſe, by the wiſeſt diſtribution of her preferments. Hence would naturally ariſe that confidence in the queen's counſels and undertakings, which the ſervile awe of her prerogative could never have occaſioned.

THIS is the true account of the loyalty, obedience, and fidelity, by which her ſervants were diſtinguiſhed. And thus, in fact, it was that, throughout her kingdom, there was every where that reve-

the reſt with GRACE; which, as the caſe ſtood, was then taken for good payment." [FRAGM. REG. p. 89.] And NAT. BACON to the ſame purpoſe. "A wiſe man, that was an eye-witneſs of HER actions, and thoſe that ſucceeded to her, many times hath ſaid, That a courtier might make a better meal of one good LOOK from her, than of a gift from ſome other." [DISC. P. ii. p. 266. *Lond.* 1651.]

rence

rence of authority [*d*], that ſenſe of honour, that conſcience of duty, in a word, that gracious ſimplicity of manners, which renders the age of ELIZABETH truly GOLDEN: as preſenting the faireſt picture of humanity, that is to be met with in the accounts of any people.

IT is true, as you ſay, interpoſed Mr. ADDISON, that this *picture is a fair one.* But of what is it a copy? Of the GENIUS of the time, or of the queen's virtues? You ſhall judge for yourſelf, after I

[*d*] This *reverence of authority*, one of the characteriſtics of that time, and which Mr. ADDISON preſently accounts for, a great writer celebrates in theſe words—"It was an ingenuous uninquiſitive time, when all the paſſions and affections of the people were lapped up in ſuch an innocent and humble obedience, that there was never the leaſt conteſtation nor capitulation with the queen, nor (though ſhe very frequently conſulted with her ſubjects) *any further reaſons urged of her actions than* HER OWN WILL." See a tract intitled THE DISPARITY, in Sir H. WOTTON's Remains, p. 46. ſuppoſed to have been written by the earl of CLARENDON.

have laid before you TWO remarkable events of that age, which could not but have the greateſt effect on the public manners; I mean, THE REFORMATION OF RELIGION, and what was introductory of it, THE RESTORATION OF LETTERS. From theſe, as their proper ſources, I would derive the ability and fidelity of ELIZABETH's good ſubjects.

THE paſſion for LETTERS was extreme. The novelty of theſe ſtudies, the artifices that had been uſed to keep men from them, their apparent uſes, and, perhaps, ſome confuſed notion of a certain diviner virtue than really belongs to them; theſe cauſes concurred to excite a curioſity in all, and determined thoſe, who had leiſure, as well as curioſity, to make themſelves acquainted with the *Greek* and *Roman* learning. The eccleſiaſtics, who, for obvious reaſons, would be the firſt and moſt earneſt in their application to letters, were not the only perſons

perſons tranſported with this zeal. The gentry and nobility themſelves were ſeized with it. A competent knowledge of the old writers was looked upon as eſſential to a gentleman's education. So that *Greek* and *Latin* became as faſhionable at court in thoſe days, as *French* is in ours. ELIZABETH herſelf, which I wonder you did not put me in mind of, was well ſkilled in both [*e*]; they ſay, employed

[*e*] PAULUS HENTZNERUS, a learned *German*, who was in *England* in 1598, goes ſtill further in his encomium on the queen's ſkill in languages. He tells us, that, "præterquam quòd Græcè et Latinè eleganter eſt docta, tenet, ultra jam memorata idiomata, etiam Hiſpanicum, Scoticum, et Belgicum" See his ITINERARIUM.

But this was the general character of the great in that reign: at leaſt, if we may credit Maſter WILLIAM HARRISON, who diſcourſeth on the ſubject before us in the following manner: "This further is not to be omitted, to the ſingular commendation of both ſorts and ſexes of our courtiers here in *England*, that there are very few of them, which have not the uſe and ſkill of fundry ſpeeches, beſide an excellent vein of writing, before time not regarded. Truly it is a rare thing with us now, to hear of a courtier which hath

employed her leiſure in making ſome fine tranſlations out of either language. It is eaſy to ſee what effect this general attention to letters muſt have on the minds of the liberal and well-educated. And it was a happineſs peculiar to that age, that learning, though cultivated with ſuch zeal, had not as yet degenerated into pedantry: I mean, that, in thoſe ſtirring and active times, it was cultivated, not ſo much for ſhow, as uſe; and was not followed, as it ſoon came to be, to the excluſion of other generous and manly applications.

hath but his own language. And to ſay how many gentlewomen and ladies there are, that, beſide ſound knowledge of the *Greek* and *Latin* tongues, are thereto no leſs ſkilful in the *Spaniſh*, *Italian*, and *French*, or in ſome one of them, it reſteth not in me; ſith I am perſuaded, that as the noblemen and gentlemen do ſurmount in this behalf, ſo theſe come very little or nothing behind them for their parts; which induſtry God continue, and accompliſh that which otherwiſe is wanting." DESCRIPT. of ENGLAND, p. 196.

CONSIDER,

CONSIDER, too, the effects, which the alterations in RELIGION had produced. As they had been lately made, as their importance was great, and as the benefits of the change had been earned at the expence of much blood and labour: all theſe conſiderations begot a zeal for religion, which hardly ever appears under other circumſtances. This zeal had an immediate and very ſenſible effect on the morals of the Reformed. It improved them in every inſtance; eſpecially as it produced a cheerful ſubmiſſion to the government, which had reſcued them from their former ſlavery, and was ſtill their only ſupport againſt the returning dangers of ſuperſtition. Thus religion, acting with all its power, and that, too, heightened by gratitude and even ſelf-intereſt, bound obedience on the minds of men with the ſtrongeſt ties [*f*]. And luckily

[*f*] One of theſe *ties* was the *prejudice of education*; and ſome uncommon methods were uſed to bind

where, I ſay, is the wonder that ſuch a people ſhould preſent ſo bright a picture of manners to their admiring panegyriſt?

To be fair with you; it was one of thoſe conjunctures, in which the active virtues are called forth, and rewarded. The dangers of the time had rouſed the ſpirit, and brought out all the force and genius, of the nation. A ſort of enthuſiaſm had fired every man with the ambition of exerting the full ſtrength of his faculties, which way ſoever they pointed, whether to the field, the cloſet, or the cabinet. Hence ſuch a crop of ſoldiers, ſcholars, and ſtateſmen had ſprung up, as have rarely been ſeen to flouriſh together in any country. And as all owed their duty, it was the faſhion of the times for all to bring their pretenſions, to the court. So that, where the multitude of candidates was ſo great, it had been ſtrange indeed, if an ordinary diſcretion had not furniſhed the queen with able ſervants

ſervants of all ſorts; and the rather, as her occaſions loudly called upon her to employ the ableſt.

I WAS waiting, ſaid Dr. ARBUTHNOT, to ſee to what concluſion this career of your eloquence would at length drive you. And it hath happened in this caſe, as in moſt others where a favourite point is to be carried, that a zeal for it is indulged, though at the expence of ſome other of more importance. Rather than admit the perſonal virtues of the queen, you fill her court, nay, her kingdom, with heroes and ſages: and ſo have paid a higher compliment to her reign, than I had intended.

To her *reign*, if you will, replied Mr. ADDISON, ſo far as regards the qualities and diſpoſitions of her ſubjects: for I will not leſſen the merit of this conceſſion with you, by inſiſting, as I might, that their *manners*, reſpectable as they were,

were

were debaſed by the contrary, yet very conſiſtent, vices of ſervility and inſolence [g]; and their virtues of every kind deformed by barbariſm. But, for the queen's own merit in the choice of her ſervants, I muſt take leave to declare my ſentiments to you very plainly. It may be true, that ſhe poſſeſſed a good degree of ſagacity in diſcerning the natures and talents of men. It was the virtue by which, her admirers tell us, ſhe

[g] A learned foreigner gives this character of the *Engliſh* at that time: "Angli, ut ADDICTE SERVIUNT, ità evecti ad dignitates priorem humilitatem INSOLENTIA rependunt." H. GROTII ANN. L. v. p. 95. *Amſt.* 1657. Hence the propriety of thoſe complaints, in our great poet, of,

"The whips and ſcorns of th' time,
Th' oppreſſor's wrong, the proud man's contumely.
THE INSOLENCE OF OFFICE;"—

complaints ſo frequent, and ſo forcibly expreſſed by him, that we may believe he painted from his own obſervation, and perhaps experience, of this inſolent miſuſe of authority. MEASURE FOR MEASURE, A. II. S. vii.

was

was principally diſtinguiſhed. Yet, that the high fame of this virtue hath been owing to the felicity of the times, abounding in all ſorts of merit, rather than to her own judgment, I think clear from this circumſtance, "That ſome of the moſt deſerving of thoſe days, in their ſeveral profeſſions, had not the fortune to attract the queen's grace, in the proportion they might have expected." I ſay nothing of poor SPENSER. Who has any concern for a poet [*b*]? But

[*b*] Yet it may ſeem probable, from this poet's conduct in *Ireland*, and his *View of the ſtate of that country*, that his talents for *buſineſs* (ſuch as CECIL himſelf muſt have approved) were no leſs conſiderable than for poetry. But he had ſerved a diſgraced man; and had drawn upon himſelf the admiration of the generous earl of *Eſſex*. So that, as the hiſtorian expreſſeth it, "by a fate which ſtill follows poets, he always wreſtled with poverty, though he had been ſecretary to the lord GRAY, lord deputy of *Ireland*." All that remained for him was, "to be interred at *Weſtminſter*, near to CHAUCER, at the charge of the earl of *Eſſex*; his hearſe being attended by poets, and mournful elegies and poems, with the pens that wrote them, thrown into his grave." CAMDEN, lib. iv.

if merit alone had determined her majeſty's choice, it will hardly at this day admit a diſpute, that the immortal HOOKER and BACON [*i*], at leaſt, had ranked

[*i*] As to Sir FRANCIS BACON, the queen herſelf gave a very plauſible reaſon, and doubtleſs much approved by the grave lawyers and other judicious perſons of that time, for her neglect of this gentleman. "She did acknowledge (ſays the earl of *Eſſex* in a letter to Mr. FRANCIS BACON) you had a great wit, and an excellent gift of ſpeech, and much other good learning. But in LAW, ſhe rather thought you could make ſhew, to the utmoſt of your knowledge, than that you were deep." MEM. OF Q. ELIZABETH by Dr. BIRCH; to whom the public is exceedingly indebted for abundance of curious information concerning the hiſtory of thoſe times.

If it be aſked, how the queen came to form this concluſion, the anſwer is plain. It was from Mr. BACON's having a GREAT WIT, an excellent GIFT OF SPEECH, and much other GOOD LEARNING.

It is true, Sir FRANCIS BACON himſelf gives another account of this matter. In a letter of advice to Sir GEORGE VILLIERS, he ſays, "In this dedication of yourſelf to the public, I recommend unto you principally that which I think was never done ſince I was born—that you countenance and encourage and advance ABLE MEN, in all kinds, degrees, and profeſſions. For in the time of the CECILS, father

ranked in another claſs than that, in which this great diſcerner of ſpirits thought fit to leave them.

And her character, continued he, in every other reſpect is juſt as equivocal. For having touched one part of it, I now turn from theſe general conſiderations on the circumſtances and genius of the time, to our more immediate ſubject, the PERSONAL QUALITIES of ELIZABETH. Hitherto we have ſtood aloof from the queen's perſon. But there is no proceeding a ſtep further in this debate, unleſs you allow me a little more liberty. May I then be permitted to draw the veil of ELIZABETH's court, and, by the lights which hiſtory holds out to us, contemplate the myſteries, that were celebrated in that awful ſanctuary?

ther and ſon, ABLE MEN WERE BY DESIGN AND OF PURPOSE SUPPRESSED. CABALA, p. 57. ed. 1691.—But either way, indeed, the queen's character is equally ſaved.

AFTER ſo reverend a preface, replied Dr. ARBUTHNOT, I think you may be indulged in this liberty. And the rather, as I am not apprehenſive that the honour of the illuſtrious queen is likely to ſuffer by it. The ſecrets of her cabinet-council, it may be, are not to be ſcanned by the profane. But it will be no preſumption to ſtep into the drawing-room.

YET I may be tempted, ſaid Mr. ADDISON, to uſe a freedom in this ſurvey of her majeſty, that would not have been granted to her moſt favoured courtiers. As far as I can judge of her character, as diſplayed in that ſolemn ſcene of her court, ſhe had ſome apparent VIRTUES, but more genuine VICES; which yet, in the public eye, had equally the fortune to reflect a luſtre on her government.

HER

HER gracious affability, her love of her people, her zeal for the national glory; were not theſe her more obvious and ſpecious qualities? Yet I doubt they were not ſo much the proper effects of her nature, as her policy; a ſet of ſpurious virtues, begotten by the very neceſſity of her affairs.

FOR her AFFABILITY, ſhe ſaw there was no way of being ſecure amidſt the dangers of all ſorts, with which ſhe was ſurrounded, but by ingratiating herſelf with the body of the people. And, though in her nature ſhe was as little inclined to this condeſcenſion as any of her ſucceſſors, yet the expediency of this meaſure compelled her to ſave appearances. And it muſt be owned, ſhe did it with grace, and even acted her part with ſpirit. Poſſibly, the conſideration of her being a female actor, was no diſadvantage to her.

But, when ſhe had made this ſacrifice to intereſt, her proper temper ſhewed itſelf clearly enough in the treatment of her nobles, and of all that came within the verge of the court. Her caprice, and jealouſy, and haughtineſs, appeared in a thouſand inſtances. She took offence ſo eaſily, and forgave ſo difficultly, that even her principal miniſters could hardly keep their ground, and were often obliged to redeem her favour by the loweſt ſubmiſſions. When nothing elſe would do, they ſickened, and were even at death's door: from which peril, however, ſhe would ſometimes relieve them; but not till ſhe had exacted from them, in the way of penance, a courſe of the moſt mortifying humiliations. Nay, the very ladies of her court had no way to maintain their credit with her, but by ſubmitting patiently to the laſt indignities.

It is allowed, from the inſtances you have in view, returned Dr. ARBUTHNOT, that her nature was ſomething high and imperious. But theſe ſallies of paſſion might well enough conſiſt with her general character of affability.

HARDLY, as I conceive, anſwered Mr. ADDISON, if you reflect that theſe ſallies, or rather habits of paſſion, were the daily terror and vexation of all about her. Her very minions ſeemed raiſed for no other purpoſe, than the exerciſe of her ill-humour. They were encouraged, by her ſmile, to preſume on the royal countenance, and then beaten down again in puniſhment of that preſumption. But, to ſay the truth, the ſlaviſh temper of the time was favourable to ſuch exertions of female caprice and tyranny. Her imperious father, all whoſe virtues ſhe inherited, had taught her a ſure way to quell the ſpirit of her nobles. They

had been long uſed to ſtand in awe of the royal frown. And the people were pleaſed to find their betters ruled with ſo high a hand, at a time when they themſelves were addreſſed with every expreſſion of reſpect, and even flattery.

She even carried this mockery ſo far, that, as Harrington obſerves well, "ſhe converted her reign, through the perpetual love-tricks that paſſed between her and her people, into a kind of romance." And though that political projector, in proſecution of his favourite notion, ſuppoſes the queen to have been determined to theſe intrigues by obſerving, that the weight of property was fallen into the popular ſcale; yet we need look no further for an account of this proceeding, than the inherent haughtineſs of her temper. She gratified the inſolence of her nature, in neglecting, or rather beating down, her nobility, whoſe greatneſs might ſeem to challenge

challenge reſpect: while the court, ſhe paid to the people, revolted her pride leſs, as paſſing only upon herſelf, as well as others, for a voluntary act of affability. Juſt as we every day ſee very proud men carry it with much loftineſs towards their equals, or thoſe who are raiſed to ſome nearneſs of degree to themſelves; at the ſame time that they affect a ſort of courteſy to ſuch, as are confeſſedly beneath them.

You ſee, then, what her boaſted affability comes to. She gave good words to her people, whom it concerned her to be well with, and whom her pride itſelf allowed her to *manage*: ſhe inſulted her nobles, whom ſhe had in her power, and whoſe abaſement flattered the idea, ſhe doted upon, of her own ſuperiority and importance [*k*].

LET

[*k*] The lord MOUNTJOY [then Sir CHARLES BLOUNT], being of a military turn, had ſtolen over into *France*, without the queen's knowledge, in order to

LET the queen's manner of treating her ſubjects be what it would, Dr. ARBUTHNOT ſaid, it appears to have given no offence in thoſe days, when the ſincerity of her intentions was never queſtioned. Her whole life is a convincing argument, that ſhe bore the moſt entire affection to her people.

HER LOVE OF HER PEOPLE, returned Mr. ADDISON haſtily, is with me a very queſtionable virtue. For what account ſhall we give of the multitude of penal ſtatutes, paſſed in her reign? Or, be-

to ſerve in *Bretagne*, under one of her generals. Upon his return, which was haſtened too by her expreſs command, "Serve me ſo again, ſaid the queen, once more, and I will lay you faſt enough for running. You will never leave, till you are knocked o'the head, as that inconſiderate fellow SIDNEY was. You ſhall go when I ſend you. In the mean time ſee that you lodge in the court, where you may FOLLOW YOUR BOOKS, READ, AND DISCOURSE OF THE WARS." Sir ROBERT NAUNTON'S FR. REG. in L. BURLEIGH.

cauſe

cauſe you will ſay, there was ſome colour for theſe; what excuſe ſhall we make for her frequent grants of monopolies, ſo ruinous to the public wealth and happineſs, and ſo perpetually complained of by her parliaments? You will ſay, ſhe recalled them. She did ſo. But not till the general indignation had, in a manner, forced her to recall them. If by her *people*, be meant thoſe of the poorer and baſer ſort only, it may be allowed, ſhe ſeemed on all occaſions willing to ſpare them. But for thoſe of better rank and fortune, ſhe had no ſuch conſideration. On the other hand, ſhe contrived in many ways to pillage and diſtreſs them. It was the tameneſs of that time, to ſubmit to every impoſition of the ſovereign. She had only to command her gentry on any ſervice ſhe thought fit, and they durſt not decline it. How many of her wealthieſt and beſt ſubjects did ſhe impoveriſh by theſe means (though under colour, you may be ſure, of her high favour);

vour); and ſometimes by her very viſits! I will not be certain, added he, that her viſit to this pompous caſtle of her own LEICESTER, had any other intention.

BUT what, above all, are we to think of her vow of celibacy, and her obſtinate refuſal to ſettle the ſucceſſion, though at the conſtant hazard of the public peace and ſafety?

YOU are hard put to it, I perceive, interrupted Dr. ARBUTHNOT, to impeach the character of the queen in this inſtance, when a few penal laws, neceſſary to the ſupport of her crown in that time of danger; one wrong meaſure of her government, and that corrected; the ordinary uſe of her prerogative; and even her virginity; are made crimes of. But I am curious to hear what you have to object to her ZEAL FOR THE ENGLISH GLORY, carried ſo high in her reign; and the ſingle point, as it ſeems to me, to which

which all her meaſures and all her counſels were directed.

THE *Engliſh* glory, Mr. ADDISON ſaid, may, perhaps, mean the ſtate and independency of the crown. And then, indeed, I have little to object. But, in any other ſenſe of the word, I have ſometimes preſumed to queſtion with myſelf, if it had not been better conſulted, by a more effectual aſſiſtance of the Reformed on the continent; by a more vigorous proſecution of the war againſt *Spain* [*l*];

[*l*] So good a judge of military matters, as Sir WALTER RALEIGH, was of this opinion with regard to the conduct of the *Spaniſh* war. "If the late queen would have believed her men of war, as ſhe did her ſcribes, we had, in her time, beaten that great empire in pieces, and made their kings, kings of figs and oranges, as in old times. But *her majeſty did all by halves*, and, by petty invaſions, taught the *Spaniard* how to defend himſelf, and to ſee his own weakneſs; which, till our attempts taught him, was hardly known to himſelf." See his Works, vol. i. p. 273.—RALEIGH, it may be ſaid, was of the CECIL faction. But the men of war, of the ESSEX faction, talked exactly in the ſame ſtrain; which ſhews that this might probably be the truth.

and, as I hinted before, by a more complete reduction of *Ireland*. But ſay, we are no judges of thoſe high matters. What glory accrued to the *Engliſh* name, by the inſidious dealing with the queen of *Scots*; by the vindictive proceedings againſt the duke of *Norfolk*; by the mercileſs perſecutions of the unhappy earl of *Eſſex*? The ſame ſpirit, you ſee, continued from the beginning of this reign to the end of it. And the obſervation is the better worth attending to, becauſe ſome have excuſed the queen's treatment of ESSEX by ſaying, "That her nature, in that decline of life, was ſomewhat clouded by apprehenſions; as the horizon, they obſerve, in the evening of the brighteſt day, is apt to be obſcured by vapours [*m*]." As if this fanciful ſimile,

[*m*] See Sir HENRY WOTTON's *Parallel of the earl of Eſſex and duke of Buckingham*. The words are theſe: "He [the earl of *Eſſex*] was to wreſtle with a queen's declining, or rather with her very ſetting age, as we may term it; which, beſides other reſpects, is commonly even of itſelf the more umbratious

ſimile, which illuſtrates perhaps, could excuſe, the perverſeneſs of the queen's temper; or, as if that could deſerve to paſs for an incident of age, which operated through life, and ſo declares itſelf to have been the proper reſult of her nature.

You promiſed, interpoſed Dr. ARBUTHNOT, not to pry too cloſely into the ſecrets of the cabinet. And ſuch I muſt needs eſteem the points to be, which you have mentioned. But enough of theſe beaten topics. I would rather attend you in the ſurvey you promiſed to take of her court, and of the princely qualities that adorned it. It is from what paſſes in the inſide of his palace, rather than from ſome queſtionable public acts, that the real character of a prince is beſt determined. And there, me-

bratious, and apprehenſive; as for the moſt part all horizons are charged with certain vapours towards their evening." REMAINS, p. 11.

thinks, you have a ſcene opened to you, that deſerves your applauſe. Nothing appears but what is truly royal. Nobody knew better, than ELIZABETH, how to ſupport the decorum of her rank. She preſided in that high orb with the dignity of a great queen. In all emergencies of danger, ſhe ſhewed a firmneſs, and, on all occaſions of ceremony, a magnificence, that commanded reſpect and admiration. Her very diverſions were tempered with a ſeverity becoming her ſex and place, and which made her court, even in its lighteſt and gayeſt humours, a ſchool of virtue.

THESE are the points, concluded he, I could wiſh you to ſpeak to. The reſt may be left to the judgment of the hiſtorian, or rather to the curioſity of the nice and critical politician.

YOU ſhall be obeyed, Mr. ADDISON ſaid. I thought it not amiſs to take off the

the glare of thoſe applauded qualities, which have dazzled the public at a diſtance, by ſhewing that they were either feigned or over-rated. But I come now to unmaſk the real character of this renowned princeſs. I ſhall paint her freely indeed, but truly as ſhe appears to me. And, to ſpeak my mind at once, I think it is not ſo much to her virtues, which at beſt were equivocal, as to her very VICES, that we are to impute the popular admiration of her character and government.

I BEFORE took notice of the high, indecent PASSION, ſhe diſcovered towards her courtiers. This fierceneſs of temper in the ſofter ſex was taken for heroiſm; and, falling in with the ſlaviſh principles of the age, begot a degree of reverence in her ſubjects, which a more equal, that is a more becoming, deportment would not have produced. Hence, ſhe was better ſerved than moſt of our

princes, only becauſe ſhe was more feared; in other words, becauſe ſhe leſs deſerved to be ſo. But high as ſhe would often carry herſelf in this unprincely, I had almoſt ſaid unwomanly, treatment of her ſervants; awing the men by her oaths, and her women by blows; it is ſtill to be remembered, that ſhe had a great deal of natural TIMIDITY in her conſtitution.

WHAT! interrupted Dr. ARBUTHNOT haſtily, the magnanimous ELIZABETH a coward? I ſhould as ſoon have expected that charge againſt CÆSAR himſelf, or your own MARLBOROUGH.

I DISTINGUISH, Mr. ADDISON ſaid, betwixt a parade of courage, put on to ſerve a turn, and keep her people in ſpirits, and that true greatneſs of mind, which, in one word, we call *magnanimity*. For this laſt, I repeat it, ſhe either had it not, or not in the degree in which it has

has been aſcribed to her. On the contrary, I ſee a littleneſs, a puſillanimity, in her conduct on a thouſand occaſions. Hence it was, that both to her people and ſuch of the neighbouring ſtates as ſhe ſtood in awe of, ſhe uſed an exceſſive hypocriſy, which, in the language of the court, you may be ſure, was called policy. To the *Hollanders*, indeed, ſhe could talk big; and it was not her humour to manage thoſe over whom ſhe had gained an aſcendant. This has procured her, with many, the commendation of a princely magnanimity. But, on the other hand, when diſcontents were apprehended from her ſubjects, or when *France* was to be diverted from any deſigns againſt her, no art was forgotten that might cajole their ſpirits with all the profeſſions of cordiality and affection. Then ſhe was *wedded*, that was the tender word, to her people: and then the intereſt of religion itſelf was ſacrificed

by this Proteſtant queen to her newly-perverted brother on the continent.

HER foible, in this reſpect, was no ſecret to her miniſters. But, above all, it was practiſed upon moſt ſucceſsfully by the Lord BURGHLEY; "for whom, as I have ſeen it obſerved, it was as neceſſary that there ſhould be treaſons, as for the ſtate that they ſhould be prevented [*n*]." Hence it was, that he was perpetually raiſing her fears, by the diſcovery of ſome plot, or, when that was wanting, by the propoſal of ſome law for her greater ſecurity. In ſhort, he was for ever finding, or making, or ſuggeſting, dangers. The queen, though ſhe would look big (for indeed ſhe was an excellent actreſs), ſtartled at the ſhadows of thoſe dangers, the ſlighteſt rumours. And to this convenient timidity of his miſtreſs, ſo conſtantly alarmed, and relieved in turn by this wily miniſter, was owing, in

[*n*] THE DISPARITY, p. 43.

a good

a good degree, that long and unrivalled intereſt, he held in her favour.

STILL, further, to this conſtitutional *fear* (which might be forgiven to her ſex, if it had not been ſo ſtrangely mixed with a more than maſculine ferocity in other inſtances) muſt be aſcribed thoſe favourite maxims of policy, which ran through her whole government. Never was prince more attached to the Machiavelian doctrine, DIVIDE ET IMPERA, than our ELIZABETH [o]. It made the ſoul of

[o] This account of her policy is confirmed by what we read in the DISPARITY, before cited. "That trick of countenancing and protecting factions (as that queen, almoſt her whole reign, did with ſingular and equal demonſtration of grace look upon ſeveral perſons of moſt diſtant wiſhes one towards another) was not the leaſt ground of much of her quiet and ſucceſs. And ſhe never doubted but that men, that were never ſo oppoſite in their goodwill each to other, or never ſo diſhoneſt in their projectments for each other's confuſion, might yet be reconciled in their allegiance towards her. Inſomuch that, during her whole reign, ſhe never endeavoured to reconcile any perſonal differences in

of her policies, domeſtic and foreign. She countenanced the two prevailing factions of the time. The Churchmen and Puritans divided her favour ſo equally, that her favourites were ſure to be the chiefs of the contending parties. Nay, her court was a conſtant ſcene of cabals and perſonal animoſities. She gave a ſecret, and ſometimes an open, countenance to theſe jealouſies. The ſame principle directed all her foreign [*p*] negociations.

the court, though the unlawful emulations of perſons of neareſt truſt about her, were ever like to overthrow ſome of her chiefeſt deſigns: *A policy, ſeldom entertained by princes, eſpecially if they have iſſues to ſurvive them.*' p. 46. Her own hiſtorian, it is true, ſeems a little ſhy of acknowledging this conduct of the queen, with regard to her nobility and miniſters. But he owns, "She now and then took a pleaſure (and not unprofitably) in the emulation and privy grudges of her women." CAMDEN'S ELIZABETH, p. 79. fol. *Lond.* 1688.

[*p*] We find an intimation to this purpoſe, in a writer of credit, at leaſt with reſpect to the *Dutch* and *Ireland*—"Jam et *divulſam* Hiberniam, et in Batavis Angli militis *ſeditiones*, velut JUSSAS, erant qui exprobrarent." GROTII ANNAL. l. xii. p. 432.

AND are you not aware, interrupted Dr. ARBUTHNOT, that this objected policy is the very topic that I, and every other admirer of the queen, would employ in commendation of her great ability in the art of government? It has been the fate of too many of our princes (and perhaps ſome late examples might be given) to be governed, and even inſulted, by a prevailing party of their own ſubjects. ELIZABETH was ſuperior to ſuch attempts. She had no bye-ends to purſue. She frankly threw herſelf on her people. And, ſecure in their affection, could defeat at pleaſure, or even divert herſelf with, the intrigues of this or that aſpiring faction.

WE underſtand you, Mr. ADDISON replied; but when two parties are contending within a ſtate, and one of them only in its true intereſt, the policy is a little extraordinary that ſhould incline

the ſovereign to diſcourage *this*, from the poor ambition of controuling *that*, or, as you put it ſtill worſe, from the dangerous humour of playing with *both* parties. I ſay nothing of later times. I only aſk, if it was indifferent, whether the counſels of the CECILS or of LEYCESTER were predominant in that reign? But I mentioned theſe things before, and I touch them again now, only to ſhew you, that this conduct, however it may be varniſhed over by the name of wiſdom, had too much the air of fearful womaniſh intrigue, to conſiſt with that heroical firmneſs and intrepidity, ſo commonly aſcribed to queen ELIZABETH [*q*].

AND

[*q*] Something like this was obſerved of her diſpoſition by Sir JAMES MELVIL. After having related to his miſtreſs, the queen of *Scots*, the ſtrong profeſſions of friendſhip which the queen of *England* had made to him, "She [the queen of *Scots*] inquired, ſays he, whether I thought that queen meant truly towards her inwardly in her heart, as ſhe appeared to do outwardly in her ſpeech. I anſwered freely, that, in my judgment, there was neither plain dealing,

AND what if, after all, I ſhould admit, replied Dr. ARBUTHNOT, that, in the compoſition of a woman's courage, at leaſt, there might be ſome ſcruples of diſcretion? Is there any advantage, worth contending for, you could draw from ſuch a conceſſion? Or, becauſe you would be thought ſerious, I will put the matter more gravely. The arts of prudence, you arraign ſo ſeverely, could not be taken for puſillanimity. They certainly were not, in her own time; for ſhe was not the leſs eſteemed or revered by all the nations of *Europe* on account of them. The moſt you can fairly conclude is, that ſhe knew how to unite addreſs with bravery, and that, on occaſion, ſhe could *diſſemble* her high ſpirit. The difficulties

dealing, nor upright meaning; but great diſſimulation, emulation, and FEAR, leſt her princely qualities ſhould over-ſoon chace her from her kingdom." &c. MEMOIRS, p. 53.

of

of her ſituation obliged her to this management.

RATHER ſay at once, returned Mr. ADDISON, that the conſtant diſſimulation, for which ſhe was ſo famous, was aſſumed to ſupply the want of a better thing, which had rendered all thoſe arts as unneceſſary as they were ignoble.

BUT *haughtineſs* and *timidity*, purſued he, were not the only vices that turned to good account in the queen's hands. She was frugal beyond all bounds of decorum in a prince, or rather AVARICIOUS beyond all reaſonable excuſe from the public wants and the ſtate of her revenue. Nothing is more certain than this fact, from the allowance both of friends and enemies. It ſeems as if, in this reſpect, her father's example had not been ſufficient; and that, to complete her character, ſhe had incorporated

porated with many of his, the leading vice of her grandfather.

HERE Dr. ARBUTHNOT could not contain himſelf; and the caſtle happening at that time, from the point where they ſtood, to preſent the moſt ſuperb proſpect, "Look there, ſaid he, on the ſtriking, though ſmall, remnants of that grandeur you juſt now magnified ſo much; and tell me if, in your conſcience, you can believe ſuch grants are the ſigns, or were the effects, of avarice. For you are not to learn, that this palace before us is not the only one in the kingdom, which bears the memory of the queen's bounty to her ſervants.

MR. ADDISON ſeemed a little ſtruck with the earneſtneſs of this addreſs: "It is true, ſaid he, the queen's fondneſs for one or two of her favourites made her ſometimes laviſh of her grants; eſpecially of what coſt her nothing, and did not, it ſeems,

ſeems, offend the delicacy of her ſcruples; I mean, of the *church-lands*. But at the ſame time her treaſury was ſhut againſt her ambaſſadors and foreign miniſters; who complain of nothing more frequently than the ſlenderneſs of their appointments, and the ſmall and ſlow remittances that were made to them. This frugality (for I muſt not call it by a worſe name) diſtreſſed the public ſervice on many occaſions [r]; and would have done it on more, if the zeal of her truſty

[r] Secretary WALSINGHAM, in a letter to the queen, *Sept.* 2, 1581, amongſt other things to the ſame purpoſe, has the following words—"*Remember*, I humbly beſeech your majeſty, *the reſpect of charges hath loſt Scotland:* and I would to God I had no cauſe to think, that *it might put your highneſs in peril of the loſs of England.*"—"And even the Lord treaſurer himſelf (we are told) in a letter ſtill extant in the paper-office, written in the critical year 1588, while the *Spaniſh* armada was expected againſt *England*, excuſes himſelf to Sir EDWARD STAFFORD, then embaſſador in *France*, for not writing to him oftener, *on account of her majeſty's unwillingneſs to be at the expence of meſſengers.*" Sir T. EDMONDES' State-papers, by Dr. BIRCH, p. 21.

ſervants

ſervants had not been content to carry it on at the expence of their own fortunes. How many inſtances might be given of this, if ONE were not more than ſufficient, and which all poſterity will remember with indignation!

YOU ſpeak of WALSINGHAM, interpoſed Dr. ARBUTHNOT. But were it not more candid to impute the poverty of that miniſter to his own generous contempt of riches, which he had doubtleſs many fair occaſions of procuring to himſelf, than to any deſigned neglect of him by his miſtreſs?

THE candour, returned Mr. ADDISON, muſt be very extraordinary, that can find an excuſe for the queen in a circumſtance that doubles her diſgrace. But be it as you pretend. The uncommon moderation of the man ſhall be a cover to the queen's parſimony. It was not, we will ſay, for this wiſe princeſs to pro-

voke an appetite for wealth in her ſervants: it was enough that ſhe gratified it, on proper occaſions, where ſhe found it already raiſed. And in this proceeding, no doubt, ſhe was governed by a tender regard for their honour, as well as her own intereſt. For how is her great ſecretary ennobled, by filling a place in the ſhort liſt of thoſe worthies, who, having lived and died in the ſervice of their countries, have left not ſo much as a pittance behind them, to carry them to their graves! All this is very well. But when ſhe had indulged this humour in one or two of her favourites, and ſuffered them, for example's ſake, to aſcend to theſe heights of honour, it was going, methinks, a little too far, to expect the ſame delicacy of virtue in all her courtiers. Yet it was not her fault, if moſt of them did not reap this fame of illuſtrious poverty, as well as WALSINGHAM. She dealt by them, indeed, as if ſhe

ſhe had ranked poverty, as well as celibacy, among the cardinal virtues.

In the mean time, I would not deny that ſhe had a princely fondneſs for ſhew and appearance. She took a pride in the brilliancy of her court. She delighted in the large trains of her nobility. She required to be royally entertained by them. And ſhe thought her honour concerned in the figure they made in foreign courts, and in the wars. But, if ſhe loved this pomp, ſhe little cared to furniſh the expence of it. She conſidered in good earneſt (as ſome have obſerved, who would have the obſervation paſs for a compliment [s]) *the purſes of her*

[s] One of theſe complaiſant obſervers was the writer of *the Deſcription of England*, who, ſpeaking of the variety of the queen's houſes, checks himſelf with ſaying, "But what ſhall I need to take upon me to repeat all, and tell what houſes the queen's majeſty hath? Sith ALL IS HIRS; and when it pleaſeth hir in the ſummer ſeaſon to recreate hirſelf abroad, and view the ſtate of the countrie, and hear the

her ſubjects as her own; and ſeemed to reckon on their being always open to her on any occaſion of ſervice, or even ceremony. She carried this matter ſo far, that the very expences of her wars were rather defrayed out of the private purſes of her nobility, than the public treaſury. As if ſhe had taken it for a part of her *prerogative* to impoveriſh her nobles at pleaſure; or rather, as if ſhe had a mind to have it thought that one of their *privileges* was, to be allowed to ruin themſelves from a zeal to her ſervice.

But the queen's avarice, proceeded he, did not only appear from her exceſſive parſimony in the management of the public treaſure, but from her rapa-

the complaints of hir unjuſt officers or ſubſtitutes, *every nobleman's houſe is hir palace*, where ſhe continuetn during pleaſure, and till ſhe returne again to ſome of hir owne; in which ſhe remaineth ſo long as pleaſeth hir." p. 196.

city

city in getting what ſhe could from particulars into her privy purſe. Hence it was that all offices, and even perſonal favours, were in a manner ſet to ſale. For it was a rule with her majeſty, to grant no ſuit but for a reaſonable conſideration. So that whoever pretended to any place of profit or honour was ſure to ſend a jewel, or other rich preſent beforehand, to prepare her mind for the entertainment of his petition. And to what other purpoſe was it that ſhe kept her offices ſo long vacant, but to give more perſons an opportunity of winning a preference in her favour; which for the moſt part inclined to thoſe who had appeared, in this interval, to deſerve it beſt? Nay, the ſlighteſt diſguſt, which ſhe frequently took on very frivolous occaſions, could not be got over but by the reconciling means of ſome valuable or well-fancied preſent. And, what was moſt grievous, ſhe ſometimes

accepted the preſent, without remitting the offence.

I REMEMBER a ridiculous inſtance of this ſort. When the Lady LEICESTER wanted to obtain the pardon of her unfortunate ſon, the Lord ESSEX, ſhe preſented the queen with an exceeding rich gown, to the value of above an hundred pounds. She was well pleaſed with the gift, but thought no more of the pardon. We need not, after this, wonder at what is ſaid of her majeſty's leaving a prodigious quantity of jewels and plate behind her, and even a *crowded wardrobe*. For ſo prevalent was this thrifty humour in the queen's highneſs, that ſhe could not perſuade herſelf to part with ſo much as a caſt-gown to any of her ſervants [*t*].

You

[*t*] Perhaps they had no need of ſuch favours. It ſeems as if they had provided for themſelves another way. One of her ladies, the Lady EDMONDES, had been applied to for her intereſt with the queen in

You allow yourſelf to be very gay, replied Dr. ARBUTHNOT, on this foible of the great queen. But one thing you forget,

in a certain affair of no great moment, then depending in the Court of Chancery. The perſon, commiſſioned to tranſact this matter with her ladyſhip, had offered her 100*l.* which ſhe treated *as too ſmall a ſum*. The relater of this fact adds—"This ruffianry of cauſes I am daily more and more acquainted with, and ſee the manner of dealing, which cometh of the queen's *ſtraitneſs* to give theſe women, whereby they preſume thus to grange and truck cauſes." See a letter in MEM. of Q. ELIZABETH, by Dr. BIRCH, vol. i. p. 354. But this 100*l.* as the virtuous Lady EDMONDES ſays, was *a ſmall ſum*. It appears, that biſhop FLETCHER, on his tranſlation to *London*, "beſtowed in allowances and gratifications to divers attendants [indeed we are not expreſsly told, they were *female*] about her majeſty, the ſum of 3100*l.* which money was given by him, for the moſt part of it, *by her majeſty's direction and ſpecial appointment*." Mem. vol. ii. p. 113. And the curioſity is, to find this minute of epiſcopal *gratifications* in a petition preſented to the queen herſelf, "To move her majeſty in commiſeration towards the orphans of this biſhop."—However, to do the ladies juſtice, the contagion of bribery was ſo general in that reign, that the greateſt men in the court were infected by it. The lord-keeper

forget, that it never biaſſed her judgment ſo far as to prevent a fit choice of her ſervants on all occaſions [*u*]. And, as to her wary management of the public revenue, which you take a pleaſure to exaggerate, this, methinks, is a venial fault in a prince, who could not, in her circumſtances, have provided for the expences of government, but by the niceſt and moſt attentive œconomy.

PUCKERING, it ſeems, had a finger in the affair of the 100*l.*; nay, himſelf ſpeaks to the lady to get him commanded by the queen to favour the ſuit. And we are told, that Sir W. RALEIGH had no leſs than 10,000 *l.* for his intereſt with the queen on a certain occaſion, after having been invited to this ſervice by the fineſt letter that ever was written.—Indeed it is not ſaid how much of this ſecret ſervice money went *in allowances and gratifications to the attendants about the queen's majeſty*, vol. ii. p. 497.

[*u*] Lord BACON made the ſame excuſe for *his* bribery; as he had learnt, perhaps, the trade itſelf from his royal miſtreſs. It was a rule with this great chancellor, "Not to ſell injuſtice, but never to let juſtice go ſcot-free."

I UNDER-

I UNDERSTAND, ſaid Mr. ADDISON, the full force of that conſideration; and believe it was that *attention* principally, which occaſioned the popularity of her reign, and the high eſteem, in which the wiſdom of her government is held to this day. The bulk of her ſubjects were, no doubt, highly pleaſed to find themſelves ſpared on all occaſions of expence. And it ſerved, at the ſame time, to gratify their natural envy of the great, to find that *their* fortunes were firſt and principally ſacrificed to the public ſervice. Nay, I am not ſure that the very rapacity of her nature, in the ſale of her offices, was any objection with the people at large, or even the lower gentry of the kingdom. For theſe, having no pretenſions themſelves to thoſe offices, would be well enough pleaſed to ſee them not *beſtowed* on their betters, but dearly purchaſed by them. And then this traffic at court furniſhed the inferior

gentry with a pretence for making the moſt of their magiſtracies. This practice at leaſt muſt have been very notorious amongſt them, when a facetious member of the lower houſe could define a juſtice of peace to be, "A living creature, that for half a dozen of chickens, will diſpenſe with a whole dozen of penal ſtatutes [*w*]." But, however this be, the queen's ends, in every view, were abundantly anſwered. She enriched herſelf: ſhe gained the affections of the people, and depreſſed and weakened the nobility. And by all theſe ways ſhe effectually provided for, what ſhe had ever moſt at heart, her own ſupreme and uncontrolled authority.

[*w*] See *Hiſt. Collections*, by H. TOWNSHEND, Eſq; p. 268. *Lond.* 1680.—The lord-keeper too, in a ſpeech in the ſtar-chamber, confirms this charge on the country juſtices. "The thirſt, ſays he, after this authority, proceedeth from nothing but an ambitious humour of gaining of reputation amongſt their neighbours: that ſtill, when they come home, *they may be preſented with preſents.*" Ibid. p. 355.

AND

AND is that to be wondered at in a great prince? returned Dr. ARBUTHNOT. Or, to take the matter in the light you place it, what if the queen had ſo much of her ſex [x] and family in her diſpoſition, as to like well enough to have her own way, is this ſuch a crime as you would make of it? If ſhe loved power, it was not to make a wanton or oppreſſive uſe of it. And if all princes knew as well to bound their own wills, as ſhe did, we ſhould not much complain of their

[x] When the queen declared to Sir JAMES MELVIL her reſolution of virginity, "I know the truth of that, madam, (ſaid he); you need not tell it me. Your majeſty thinks, if you were married, you would be but queen of *England*; and now you are both king and queen. *I know your ſpirit cannot endure a commander.*" MEM. p. 49. This was frank. But Sir JAMES MELVIL was too well ſeen in courts to have uſed this language, if he had not underſtood it would be welcome. Accordingly, the queen's highneſs did not ſeem diſpleaſed with the imputation.

impatience to be under the control of their ſubjects.

I AM ſorry, ſaid Mr. ADDISON, that the acts of her reign will not allow me to come into this opinion of her moderation. On the other hand, her government appears to me, in many inſtances, OPPRESSIVE, and highly prejudicial to the antient rights and privileges of her people. For what other conſtruction can we make of her frequent interpoſition to reſtrain the counſels of their repreſentatives in parliament: threatening ſome, impriſoning others, and ſilencing all with the thunder of her prerogative? Or, when ſhe had ſuffered their counſels to ripen into bills, what ſhall we ſay of her high and mighty rejection of them, and that not in ſingle and extraordinary caſes, but in matters of ordinary courſe, and by dozens? I paſs by other inſtances. But was her *moderation* ſeen in dilapidating the revenues of the church; of that church,

church, which ſhe took under the wing of her ſupremacy, and would be thought to have ſheltered from all its enemies [y]? The honeſt archbiſhop PARKER, I have

[y] This was a common topick of complaint againſt the queen, or at leaſt her miniſters, and gave occaſion to that reproof of the poet SPENSER, which the perſons concerned could hardly look upon as very decent,

"Scarce can a biſhoprick forepaſs them bye
But that it muſt be gelt in privity."

Mother HUBBARD's *Tale*.

But a biſhop of that time carries the charge ſtill further. In one of his ſermons at court before the queen, "Parſonages and vicarages, ſays he, ſeldom paſs now-a-days from the patron, but either for the leaſe, or the preſent money. Such merchants are broken into the church of God, a great deal more intolerable than were they, whom CHRIST whipped out of the temple."—This language is very harſh, and ſurely not deſerved by the Proteſtant patrons of thoſe days, who were only, as we may ſuppoſe, for reducing the church of CHRIST to its pure and primitive ſtate of indigence and ſuffering. How edifying is it to hear St. PAUL ſpeak of his being—*In hunger and thirſt, in faſtings often, in cold and nakedneſs!* And how perfectly reformed would our church be, if its miniſters were but once more in this bleſſed apoſtolical condition!

heard,

heard, ventured to remonſtrate againſt this abuſe, the cognizance of which came ſo directly within his province. But to what effect, may be gathered, not only from the continuance of theſe depredations, but her ſevere reprehenſion of another of her biſhops, whom ſhe threatened with an oath to UNFROCK—that was her majeſty's own word—if he did not immediately give way to her princely extortions.

It may be hardly worth while to take notice of ſmaller matters. But who does not reſent her capricious tyranny, in diſgracing ſuch of her ſervants as preſumed to deviate, on any pretence, from her good pleaſure; nay, ſuch as gave an implicit obedience to her will, if it ſtood with her intereſt to diſgrace them? Something, I know, may be ſaid to excuſe the proceedings againſt the queen of *Scots*. But the fate of DAVISON will reflect

reflect eternal diſhonour on the policy, with which that meaſure was conducted.

I RUN over theſe things haſtily, continued Mr. ADDISON, and in no great order: but you will ſee what to conclude from theſe hints; which taken together, I believe, may furniſh a proper anſwer to the moſt conſiderable parts of your apology.

To ſum it up in few words. Thoſe two great events of her time, THE ESTABLISHMENT OF THE REFORMATION, and THE TRIUMPH OVER THE POWER OF SPAIN, caſt an uncommon luſtre on the reign of ELIZABETH. Poſterity, dazzled with theſe obvious ſucceſſes, went into an exceſſive admiration of her perſonal virtues. And what has ſerved to brighten them the more, is the place in which we chance to find her, between the bigot queen on the one hand, and the pedant king on the other.

No

No wonder then that, on the firſt glance, her government ſhould appear able, and even glorious. Yet, in looking into particulars, we find that much is to be attributed to fortune, as well as ſkill; and that her glory is even leſſened by conſiderations, which, on a careleſs view, may ſeem to augment it. The difficulties, ſhe had to encounter, were great. Yet theſe very difficulties, of themſelves, created the proper means to ſurmount them. They ſharpened the wits, inflamed the ſpirits, and united the affections, of a whole people. The name of her great enemy on the continent, at that time, carried terror with it. Yet his power was, in reality, much leſs than it appeared. The *Spaniſh* empire was corrupt and weak, and tottered under its own weight. But this was a ſecret even to the *Spaniard* himſelf. In the mean time, the confidence, which the opinion of great ſtrength inſpires, was a favourable circumſtance. It occaſioned a remiſſ-

neſs

neſs and neglect of counſel on one ſide, in proportion as it raiſed the utmoſt vigilance and circumſpection on the other. But this was not all. The religious feuds in the Low Countries—the civil wars in *France*—the diſtractions of *Scotland*—all concurred to advance the fortunes of ELIZABETH. Yet all had, perhaps, been too little in that grand criſis of her fate, and, as it fell out, of her glory, if the conſpiring elements themſelves had not fought for her.

SUCH is the natural account of her foreign triumphs. Her domeſtic ſucceſſes admit as eaſy a ſolution. Thoſe external dangers themſelves, the genius of the time, the ſtate of religious parties, nay, the very factions of her court, all of them directly, or by the ſlighteſt application of her policy, adminiſtered to her greatneſs. Such was the condition of the times, that it forced her to aſſume the reſemblance, at leaſt, of ſome popular

lar *virtues:* and ſo ſingular her fortune, that her very *vices* became as reſpectable, perhaps more uſeful to her reputation, than her virtues. She was vigilant in her counſels; careful in the choice of her ſervants; courteous and condeſcending to her ſubjects. She appeared to have an extreme tenderneſs for the intereſts, and an extreme zeal for the honour, of the nation. This was the bright ſide of her character; and it ſhone the brighter from the conſtant and imminent dangers, to which ſhe was expoſed. On the other hand, ſhe was choleric, and imperious; jealous, timid, and avaricious: oppreſſive, as far as ſhe durſt; in many caſes capricious, in ſome tyrannical. Yet theſe vices, ſome of them ſharpened and refined her policy, and the reſt, operating chiefly towards her courtiers and dependents, ſtrengthened her authority, and rooted her more firmly in the hearts of the people. The mingled ſplendour of theſe qualities,

qualities, good and bad (for even her worſt had the luck, when ſeen but on one ſide, or in well-diſpoſed lights, to look like good ones) ſo far dazzled the eyes of all, that they did not, or would not, ſee many outrageous acts of tyranny and oppreſſion.

AND thus it hath come to paſs that, with ſome ability, more cunning, and little real virtue, the name of ELIZABETH is, by the concurrence of many accidental cauſes, become the moſt revered of any in the long roll of our princes. How little ſhe merited this honour, may appear from this ſlight ſketch of her character and government. Yet, when all proper abatement is made in both, I will not deny her to have been a great, that is, a *fortunate*, queen; in this, perhaps, the moſt fortunate, that ſhe has attained to ſo unrivalled a glory with ſo few pretenſions to deſerve it.

AND ſo, replied Dr. ARBUTHNOT, you have concluded your invective in full form, and rounded it, as the antient orators uſed to do, with all the advantage of a peroration. But, ſetting aſide this trick of eloquence, which is apt indeed to confound a plain man, unuſed to ſuch artifices, I ſee not but you have left the argument much as you took it up; and that I may ſtill have leave to retain my former reverence for the good old times of queen ELIZABETH. It is true, ſhe had ſome foibles. You have ſpared, I believe, none of them. But, to make amends for theſe defects, let but the hiſtory of her reign ſpeak for her, I mean in its own artleſs language, neither corrupted by flattery, nor tortured by invidious gloſſes; and we muſt ever conceive of her, I will not ſay as the moſt faultleſs, perhaps not the moſt virtuous, but ſurely the moſt able, and, from the ſplendor

ſplendor of ſome leading qualities, the moſt glorious of our *Engliſh* monarchs.

To give you my notion of her in few words.—For the diſpute, I find, muſt end, as moſt others uſually do, in the ſimple repreſentation of our own notions.—She was diſcreet, frugal, provident, and ſagacious: intent on the purſuit of her great ends, *the eſtabliſhment of religion*, and *the ſecurity and honour of her people:* prudent in the choice of the beſt *means* to effect them, the employment of able ſervants, and the management of the public revenue: dexterous at improving all advantages which her own wiſdom or the circumſtances of the times gave her: fearleſs and intrepid in the execution of great deſigns, yet careful to unite the deepeſt foreſight with her magnanimity. If ſhe ſeemed AVARICIOUS, let it be conſidered that the niceſt frugality was but neceſſary in her ſituation: if IMPERIOUS, that a female go-

vernment needed to be made reſpectable by a ſhew of authority: and if at any time OPPRESSIVE, that the *Engliſh* conſtitution, as it then ſtood, as well as her own nature, had a good deal of that bias.

IN a word, let it be remembered, that ſhe had the honour of ruling [z], perhaps of forming, the wiſeſt, the braveſt, the moſt virtuous people, that have adorned any age or country; and that ſhe advanced the glory of the *Engliſh* name and that of her own dignity to a height, which has no parallel in the annals of our nation.

[z] It was this circumſtance that ſeemed to weigh moſt with the Lord Chancellor BACON; who, in his ſhort tract, *In felicem memoriam* ELIZABETHÆ, ſaith, "Illud cogitandum cenſeo, in quali populo imperium tenuerit: ſi enim in Palmyrenis, aut Aſiâ imbelli et molli regnum ſortita eſſet, minùs mirandum fuiſſet—verùm in ANGLIA, *natione ferociſſimâ et bellicoſiſſimâ*, omnia ex nutu fœminæ moveri et cohiberi potuiſſe, SUMMAM MERITO ADMIRATIONEM HABET."

MR. DIGBY, who had been very attentive to the courſe of this debate, was a little diſappointed with the concluſion of it. He thought to have ſettled his judgment of this reign by the information his two friends ſhould afford him. But he found himſelf rather perplexed by their altercations, than convinced by them. He owned, however, the pleaſure they had given him; and ſaid, he had profited ſo much at leaſt by the occaſion, that, for the future, he ſhould conceive with ſomething leſs reverence of the great queen, and ſhould proceed with leſs prejudice to form his opinion of her character and adminiſtration.

MR. ADDISON did not appear quite ſatisfied with this ſceptical concluſion; and was going to enforce ſome things, which he thought had been touched too ſlightly, when Dr. ARBUTHNOT took

notice that their walk was now at an end; the path, they had taken, having by this time brought them round again to the walls of the caſtle. Beſides, he ſaid, he found himſelf much wearied with this exerciſe; though the warmth of debate, and the opportunities he took of reſting himſelf at times, had kept him from complaining of it. He propoſed, therefore, getting into the coach as ſoon as poſſible; where, though the converſation was in ſome ſort reſumed, there was nothing material enough advanced on either ſide to make it neceſſary for me to continue this recital any further.

DIA-

DIALOGUE V.

On the CONSTITUTION of the ENGLISH Government.

SIR JOHN MAYNARD, MR. SOMERS, BISHOP BURNET [a].

TO DR. TILLOTSON.

THOUGH the principles of nature and common ſenſe do fully authoriſe reſiſtance to the civil magiſtrate in extreme caſes, and of courſe juſtify the

[a] The ſubject of theſe Dialogues, on *the Engliſh Conſtitution*, is the moſt important in *Engliſh* politics.—To cite all the paſſages from our beſt antiquaries and hiſtorians, out of which this work was formed, and which lay before the writer in compoſing it, would ſwell this volume to an immoderate ſize. It is enough to ſay, that nothing *material* is advanced in the courſe of the argument, but on the beſt authority.

late Revolution to every candid and diſpaſſionate man; yet I am ſenſible, my excellent friend, there are many prejudices which hinder the glorious proceedings in that affair from being ſeen in their true light. The principal of them, indeed, are founded on falſe ſyſtems of policy, and thoſe tied down on the conſciences of men by wrong notions of religion. And ſuch as theſe, no doubt, through the experience of a better government, and a juſter turn of thinking, which may be expected to prevail in our times, will gradually fall away of themſelves.

But there is another ſet of notions on this ſubject, not ſo eaſy to be diſcredited, and which are likely to keep their hold on the minds even of the more ſober and conſiderate ſort of men. For whatever advantage the cauſe of liberty may receive from general reſonings on the origin and nature of civil government, the

the greater part of our countrymen will conſider, and perhaps rightly, the inquiry into the conſtitution of *their* own government, as a queſtion of FACT; that muſt be tried by authorities and precedents only; and decided at laſt by the evidence of hiſtorical teſtimony, not by the concluſions of philoſophy or political ſpeculation.

Now, though we are agreed that this way of managing the controverſy muſt, when fully and fairly purſued, be much in favour of the new ſettlement, yet neither, I think, is it for every man's handling, nor is the evidence reſulting from it of a nature to compel our aſſent. The argument is formed on a vaſt variety of particulars, to be collected only from a large and intimate acquaintance with the antiquities, laws, and uſages of the kingdom. Our printed hiſtories are not only very ſhort and imperfect; but the original records, which the curious have

in their poſſeſſion, are either ſo obſcure or ſo ſcanty, that a willing adverſary hath always in readineſs ſome objection, or ſome cavil at leaſt, to oppoſe to the evidence that may be drawn from them. Beſides, appearances, even in the plaineſt and moſt unqueſtioned parts of our hiſtory, are ſometimes ſo contradictory; ariſing either from the tyranny of the prince, the neglect of the people, or ſome other circumſtance of the times; and, to crown all, the queſtion itſelf hath been ſo involved by the diſputations of prejudiced and deſigning men; that the more intelligent inquirer is almoſt at a loſs to determine for himſelf, on which ſide the force of evidence lies.

On this account I have frequently thought with myſelf, that a right good CONSTITUTIONAL HISTORY of *England* would be the nobleſt ſervice that any man, duly qualified for the execution of ſuch a work, could render to his country.

For

For though, as I ſaid, the ſubject be obſcure in itſelf, and perplexed by the ſubtilties which contending parties have invented for the ſupport of their ſeveral ſchemes; yet, from all I have been able to obſerve in the courſe of my own reading, or converſation, there is little doubt but that the form of the *Engliſh* government hath, at all times, been FREE. So that, if ſuch a hiſtory were drawn up with ſufficient care out of our authentic papers and public monuments, it would not only be matter of entertainment to the curious, but the greateſt ſecurity to every *Engliſhman* of his religious and civil rights. For what can be conceived, more likely to preſerve and perpetuate theſe rights, than the ſtanding evidence which ſuch a work would afford, of the genuine ſpirit and temper of the conſtitution? Of the principles of freedom [*b*], on

[*b*] That is, of the *feudal laws*: which was one of the ſubjects explained by the biſhop to his royal pupil the duke of *Glouceſter*. "I acquainted him, ſays

on which it was formed, and on which it hath been continually and uniformly conducted? Our youth, who at preſent amuſe themſelves with little more than the military part of our annals, would then have an eaſy opportunity of ſeeing to the bottom of all our civil and domeſtic broils. They would know on what pretences the PREROGATIVE of our kings hath ſometimes aſpired to exalt itſelf above controul; and would learn to revere the magnanimity of their forefathers, who as conſtantly ſucceeded in their endeavours to reduce it within the ancient limits and boundaries of the LAW. In a word, they would no longer reſt on the ſurface and outſide, as it were, of the *Engliſh* affairs, but would penetrate the interior parts of our conſtitution; and

ſays he, with all the great revolutions that had been in the world, and gave him a copious account of the *Greek* and *Roman* hiſtories, and of PLUTARCH's Lives: the laſt thing I explained to him was the Gothic conſtitution, and the BENEFICIARY AND FEUDAL LAWS." [HIST. *of his own Times*, vol. iv. p. 357. *Edinb.* 1753.]

furniſh

furniſh themſelves with a competent degree of civil and political wiſdom; the moſt ſolid fruit that can be gathered from the knowledge and experience of paſt times.

AND I am ready to think that ſuch a proviſion as this, for the inſtruction of the *Engliſh* youth, may be the more requiſite, on account of that limited indeed, yet awful form of government, under which we live. For, beſides the name, and other enſigns of majeſty, in common with thoſe who wear the moſt deſpotic crown, the whole execution of our laws, and the active part of government, is in the hands of the prince. And this pre-eminence gives him ſo reſpectable a figure in the eyes of his ſubjects, and preſents him ſo conſtantly, and with ſuch luſtre of authority, to their minds, that it is no wonder they are ſometimes diſpoſed to advance him, from the rank of firſt magiſtrate

giſtrate of a free people, into that of ſupreme and ſole arbiter of the laws.

So that, unleſs theſe prejudices are corrected by the knowledge of our conſtitutional hiſtory, there is conſtant reaſon to apprehend, not only that the royal authority may ſtretch itſelf beyond due bounds; but may grow, at length, into that enormous tyranny, from which this nation hath been at other times ſo happily, and now of late ſo wonderfully, redeemed.

But I ſuffer myſelf to be carried by theſe reflexions much further than I deſigned. I would only ſay to you, that, having ſometimes reflected very ſeriouſly on this ſubject, it was with the higheſt pleaſure I heard it diſcourſed of the other day by two of the moſt accompliſhed lawyers of our age: the venerable Sir John Maynard, who, for a long courſe of years, hath maintained the full credit

credit and dignity of his profeſſion; and Mr. SOMERS, who, though a young man, is riſing apace, and with proportionable merits, into all the honours of it.

I WAS very attentive, as you may ſuppoſe, to the progreſs of this remarkable converſation; and, as I had the honour to bear a full ſhare in it myſelf, I may the rather undertake to give you a particular account of it. I know the pleaſure it will give you to ſee a ſubject, you have much at heart, and which we have frequently talked over in the late times, thoroughly canvaſſed, and cleared up, as I think it muſt be, to your entire ſatisfaction.

It was within a day or two after that great event, ſo pleaſing to all true *Engliſhmen*, THE CORONATION OF THEIR MAJESTIES [*c*], that Mr. SOMERS and I went, as we ſometimes uſed, to paſs an

[*c*] On *April* 11, 1689.

evening

evening with our excellent friend, my Lord Commiſſioner [*d*]. I ſhall not need to attempt his character to you, who know him ſo well. It is enough to ſay, that his faculties and ſpirits are, even in this maturity of age, in great vigour. And it ſeems as if this joyful Revolution, ſo agreeable to his hopes and principles, had given a freſh ſpring and elaſticity to both.

THE converſation of courſe turned on the late auguſt ceremony; the mention of which awakened a ſort of rapture in the good old man, which made him overflow in his meditations upon it. Seeing us in admiration of the zeal which tranſported him, "Bear with me, ſaid he, my young friends. Age, you know, hath its privilege. And it may be, I uſe it ſomewhat unreaſonably. But I, who have ſeen the prize of liberty contend-

[*d*] Of the great ſeal—The other lawyers in commiſſion were KECK and RAWLINSON.

ing

ing for through half a century, to find it obtained at laſt by a method ſo ſure, and yet ſo unexpected, do you think it poſſible that I ſhould contain myſelf on ſuch an occaſion? Oh, if he had lived with me in thoſe days, when ſuch mighty ſtruggles were made for public freedom, when ſo many wiſe counſels miſcarried, and ſo many generous enterpriſes concluded but in the confirmation of lawleſs tyranny; if, I ſay, ye had lived in thoſe days, and now at length were able to contraſt with me, to the tragedies that were then acted, this ſafe, this bloodleſs, this complete deliverance; I am miſtaken, if the youngeſt of you could reprove me for this joy, which makes me think I can never ſay enough on ſo delightful a ſubject.

BP. BURNET.

Reprove you, my lord? Alas! we are neither of us ſo unexperienced in what hath paſſed of late in theſe kingdoms, as not to rejoice with you to the utmoſt

utmoſt for this aſtoniſhing deliverance. You know, I might boaſt of being among the firſt that wiſhed for, I will not ſay projected, the meaſures by which it hath been accompliſhed. And for Mr. SOMERS, the church of *England* will tell——

MR. SOMERS.

I CONFESS, my warmeſt wiſhes have ever gone along with thoſe who conducted this noble enterpriſe. And I pretend to as ſincere a pleaſure as any man, in the completion of it. Yet, if it were not unreaſonable at ſuch a time, I might be tempted to mention one circumſtance, which, I know not how, a little abates the joy of theſe triumphant gratulations.

SIR J. MAYNARD.

Is not the ſettlement then to your mind? Or hath any precaution been neglected, which you think neceſſary for the more effectual ſecurity of our liberties?

MR.

MR. SOMERS.

NOT that. I think the proviſion for the people's right as ample as needs be deſired. Or, if any further reſtrictions on the crown be thought proper, it will now be eaſy for the people, in a regular parliamentary way, to effect it. What I mean is a conſideration of much more importance.

BP. BURNET.

THE pretended prince of WALES, you think, will be raiſing ſome diſturbance, or alarm at leaſt, to the new government. I believe, I may take upon me to give you perfect ſatisfaction upon that ſubject [*e*].

MR. SOMERS.

STILL your conjectures fall ſhort or wide of my meaning. Our new MAGNA

[*e*] This was a favourite ſubject with our good biſhop; and how qualified he was to diſcuſs it, even in its minuteſt particularities, may be learnt from his hiſtory at large.

brought about, and can be defended only, on the principles of liberty; the ſettlement, introduced by it, can be thought ſecure no longer than while thoſe principles are rightly underſtood, and generally admitted."

BP. BURNET.

BUT what reaſon is there to apprehend that theſe principles, ſo commonly profeſſed and publickly avowed, will not continue to be kept up in full vigour?

MR. SOMERS.

BECAUSE, I doubt, they are ſo commonly and publickly avowed, only to ſerve a preſent turn; and not becauſe they come from the heart, or are entertained on any juſt ground of conviction.

BP. BURNET.

VERY likely: and conſidering the pains that have been taken to poſſeſs the minds of men with other notions of government,

vernment, the wonder is, how they came to be entertained at all. Yet ſurely the experience of better times may be expected to do much. Men will of courſe think more juſtly on theſe ſubjects in proportion as they find themſelves more happy. And thus the principles, which, as you ſay, were firſt pretended to out of neceſſity, will be followed out of choice, and bound upon them by the concluſions of their own reaſon.

MR. SOMERS.

I WISH your lordſhip be not too ſanguine in theſe expectations. It is not to be conceived how inſenſible the people are to the bleſſings they enjoy, and how eaſily they forget their paſt miſeries. So that, if their principles have not taken deep root, I would not anſwer for their continuing much longer than it ſerved their purpoſe to make a ſhew of them.

SIR J. MAYNARD.

I MUST confeſs, that all my experience of mankind inclines me to this opinion. I could relate to you ſome ſtrange inſtances of the ſort, Mr. SOMERS hints at. But after all, Sir, you do not indulge theſe apprehenſions, on account of the general fickleneſs of human nature. You have ſome more particular reaſons for concluding that the ſyſtem of liberty, which hath worked ſuch wonders of late, is not likely to maintain its ground amongſt us.

MR. SOMERS.

I HAVE: and I was going to explain thoſe reaſons, if my lord of SALISBURY had not a little diverted me from the purſuit of them.

IT is very notorious from the common diſcourſe of men even on this great occaſion (and I wiſh it had not appeared too evidently in the debates of the houſes), that

that very many of us have but crude notions of the form of government under which we live, and which hath been tranſmitted to us from our forefathers. I have met with perſons of no mean rank, and ſuppoſed to be well ſeen in the hiſtory of the kingdom, who ſpeak a very ſtrange language. They allow, indeed, that ſomething was to be done in the perilous circumſtances into which we had fallen. But, when they come to explain themſelves, it is in a way that leaves us no *right* to do any thing; at leaſt, not what it was found expedient for the nation to do at this juncture. For they contend in ſo many words, "that the crown of *England is abſolute*; that the form of government is an *entire and ſimple monarchy*; and that ſo it hath continued to be in every period of it down to the Abdication: that the CONQUEST, at leaſt, to aſcend no higher, inveſted the FIRST WILLIAM in abſolute dominion; that from him it devolved of

courſe upon his ſucceſſors; and that all the pretended rights of the people, the GREAT CHARTERS of ancient and modern date, were mere uſurpations on the prince, extorted from him by the neceſſity of his affairs, and revocable at his pleaſure: nay, they inſinuate that parliaments themſelves were the creatures of his will; that their privileges were all derived from the ſovereign's grant; and that they made no part in the original frame and texture of the *Engliſh* government.

IN ſupport of this extraordinary ſyſtem, they refer us to the conſtant tenor of our hiſtory. They ſpeak of the Conqueror, as proprietary of the whole kingdom; which accordingly, they ſay, he parcelled out, as he ſaw fit, in grants to his *Norman* and *Engliſh* ſubjects: that, through his partial conſideration of the church, and an exceſſive liberality to his favoured ſervants, this diſtri-

diſtribution was ſo ill made, as to give occaſion to all the broils and contentions that followed: that the church-men began their unnatural claim of independency on the crown; in which attempt they were ſoon followed by the encroaching and too powerful barons: that, in theſe ſtruggles, many flowers of the crown were rudely torn from it, till a ſort of truce was made, and the rebellious humour ſomewhat compoſed, by the extorted articles of RUNNING-MEDE: that theſe confuſions, however, were afterwards renewed, and even increaſed, by the conteſts of the two houſes of YORK and LANCASTER: but that, upon the union of the roſes in the perſon of HENRY VII, theſe commotions were finally appeaſed, and the crown reſtored to its antient dignity and luſtre: that, indeed, the uſage of parliaments, with ſome other forms of popular adminiſtration, which had been permitted in the former irregular reigns, was continued; but

but of the mere grace of the prince, and without any conſequence to his prerogative: that ſucceeding kings, and even HENRY himſelf, conſidered themſelves as poſſeſſed of an imperial crown; and that, though they might ſometimes condeſcend to take the advice, they were abſolutely above the control, of the people: in ſhort, that the law itſelf was but the will of the prince, declared in parliament; or rather ſolemnly received and atteſted there, for the better information and more entire obedience of the ſubject.

THIS they deliver as a juſt and fair account of the *Engliſh* government; the genius of which, they ſay, is abſolute and deſpotic in the higheſt degree; as much ſo, at leaſt, as that of any other monarch in *Europe*. They aſk, with an air of inſult, what reſtraint our HENRY VIII, and our admired ELIZABETH, would ever ſuffer to be put on their prerogative; and they mention with

with deriſion the fancy of dating the high pretenſions of the crown from the acceſſion of the STUART family. They affirm, that JAMES I, and his ſon, aimed only to continue the government on the footing on which they had received it; that their notions of it were authorized by conſtant fact; by the evidence of our hiſtories; by the language of parliaments; by the concurrent ſenſe of every order of men amongſt us: and that what followed in the middle of this century was the mere effect of POPULAR, as many former diſorders had been of PATRICIAN, violence. In a word, they conclude with ſaying, that the old government revived again at the RESTORATION, juſt as, in like circumſtances, it had done before at the UNION of the two houſes: that, in truth, the voluntary deſertion of the late king had given a colour to the innovation of the preſent year; but that, till this new ſettlement was made, the *Engliſh* conſtitution, as implying ſomething different

ferent from pure monarchy, was an unintelligible notion, or rather a mere whimſy, that had not the leaſt foundation in truth or hiſtory."

THIS is a ſummary of the doctrines, which, I doubt, are too current amongſt us. I do not ſpeak of the bigoted adherents to the late king; but of many cooler and more diſintereſted men, whoſe *religious* principles, as I ſuppoſe (for it appears it could not be their *political*), had engaged them to concur in the new ſettlement. You will judge, then, if there be not reaſon to apprehend much miſchief from the prevalence and propagation of ſuch a ſyſtem: a ſyſtem, which, as being, in the language of the patrons of it, founded upon *fact*, is the more likely to impoſe upon the people; and, as referring to the practice of antient times, is not for every man's confutation. I repeat it, therefore; if this notion of the deſpotic form of our govetnment become general,

general, I tremble to think what effect it may hereafter produce on the minds of men; eſpecially when joined to that falſe tenderneſs, which the people of *England* are ſo apt to entertain for their princes, even the worſt of them, under misfortune. I might further obſerve, that this prerogative ſyſtem hath a direct tendency to produce, as well as heighten, this compaſſion to the ſovereign. And I make no ſcruple to lay it before you with all its circumſtances, becauſe I know to whom I ſpeak, and that I could not have wiſhed for a better opportunity of hearing it confuted.

BP. BURNET.

I MUST own, though I was ſomewhat unwilling to give way to ſuch melancholy apprehenſions at this time, I think with Mr. SOMERS, there is but too much reaſon to entertain them. For my own part, I am apt to look no further for the

right

right of the legiſlature to ſettle the government in their own way, than their own free votes and reſolutions. For, being uſed to conſider all political power as coming originally from the people, it ſeems to me but fitting that they ſhould diſpoſe of that power for their own uſe, in what hands, and under what conditions, they pleaſe. Yet, as much regard is due to eſtabliſhed forms and antient preſcription, I think the matter of *fact* of great conſequence; and, if the people in general ſhould once conceive of it according to this repreſentation, I ſhould be very anxious for the iſſue of ſo dangerous an opinion. I muſt needs, therefore, join very entirely with Mr. SOMERS, in wiſhing to hear the whole ſubject canvaſſed, or rather finally determined, as it muſt be if Sir JOHN MAYNARD will do us the pleaſure to acquaint us what his ſentiments are upon it.

SIR

SIR J. MAYNARD.

TRULY, my good friends, you have opened a very notable cauſe, and in good form. Only, methinks, a little leſs ſolemnity, if you had ſo pleaſed, might have better ſuited the occaſion. Why, I could almoſt laugh, to hear you talk of fears and dangers from a phantom of your own raiſing. I certainly believe the common proverb belies us; and that old age is not that daſtardly thing it hath been repreſented. For, inſtead of being terrified by this conceit of a preſcriptive right in our ſovereigns to tyrannize over the ſubject, I am ready to think the contrary ſo evident from the conſtant courſe of our hiſtory, that the ſimpleſt of the people are in no hazard of falling into the deluſion. I ſhould rather have apprehended miſchief from other quarters; from the influence of certain ſpeculative points, which have been too ſucceſsfully propagated of late; and chiefly from thoſe pernicious

pernicious gloſſes, which too many of my order have made on the letter of the law, and too many of yours, my lord of SALISBURY, on that of the goſpel. Truſt me, if the matter once come to a queſtion of FACT, and the inquiry be only concerning antient form and precedent, the deciſion will clearly be in our favour. And for yourſelves, I aſſure myſelf, this deciſion is already made. But ſince you are willing to put me upon the taſk, and we have leiſure enough for ſuch an amuſement, I ſhall very readily undertake it. And the rather, as I have more than once in my life had occaſion to go to the bottom of this inquiry; and now very lately have taken a pleaſure to reflect on the general evidence which hiſtory affords of our free conſtitution, and to review the ſcattered hints and paſſages I had formerly ſet down for my private ſatisfaction.

"I UNDERSTAND the queſtion to be, not under what *form* the government hath

hath appeared at ſome particular conjunctures, but what we may conclude it to have been from the general current and tenor of our hiſtories. More particularly, I conceive, you would aſk, not whether the *adminiſtration* hath not at ſome ſeaſons been DESPOTIC, but whether the *genius* of the government hath not at all times been FREE. Or, if you do not think the terms, in which I propoſe the queſtion, ſtrict enough, you will do well to ſtate it in your own way, that hereafter we may have no diſpute about it.

BP. BURNET.

I SUPPOSE, the queſtion, as here put, is determinate enough for our purpoſe.—Or, have you, Mr. SOMERS, any exceptions to make to it?

MR. SOMERS.

I BELIEVE we underſtand each other perfectly well; the queſtion being only

this, "Whether there be any ground in hiſtory, to conclude that the prince hath a conſtitutional claim to abſolute uncontrolable dominion; or, whether the liberty of the ſubject be not eſſential to every different form, under which the *Engliſh* government hath appeared?"

SIR J. MAYNARD.

You expect of me then to ſhew, in oppoſition to the ſcheme juſt now delivered by you, that neither from the original conſtitution of the government, nor from the various forms (for they have, indeed, been various) under which it hath been adminiſtered, is there any reaſon to infer, that the *Engliſh* monarchy is, or of right ought to be, deſpotic and unlimited.

Now this I take to be the eaſieſt of all undertakings; ſo very eaſy, that I could truſt a plain man to determine the matter for himſelf by the light that offers itſelf

itſelf to him from the lighteſt of our hiſtories. 'Tis true, the deeper his reſearches go, his conviction will be the clearer; as any one may ſee by dipping into my friend NAT. BACON's diſcourſes; where our free conſtitution is ſet forth with that evidence, as muſt for ever have ſilenced the patrons of the other ſide, if he had not allowed himſelf to ſtrain ſome things beyond what the truth, or indeed his cauſe, required. But, ſaving to myſelf the benefit of his elaborate work, I think it ſufficient to take notice, that the ſyſtem of liberty is ſupported even by that ſhort ſketch of our hiſtory, which Mr. SOMERS hath laid before us; and in ſpite of the diſguiſes, with which, as he tells us, the enemies of liberty have endeavoured to cloak it.

YOU do not, I am ſure, expect from me, that I ſhould go back to the elder and more remote parts of our hiſtory;

that I ſhould take upon me to inveſtigate the ſcheme of government, which hath prevailed in this kingdom from the time that the *Roman* power departed from us; or that I ſhould even lay myſelf out in delineating, as many have done, the plan of the *Saxon* conſtitution: though ſuch an attempt might not be unpleaſing, nor altogether without its uſe, as the *principles* of the *Saxon* policy, and in ſome reſpects the *form* of it, have been conſtantly kept up in every ſucceeding period of the *Engliſh* monarchy. I content myſelf with obſerving, that the ſpirit of liberty was predominant in thoſe times: and, for proof of it, appeal at preſent only to one ſingle circumſtance, which you will think remarkable. Our *Saxon* anceſtors conceived ſo little of government, by the will of the magiſtrate, without fixed laws, that LAGA, or LEAGA, which in their language firſt and properly ſignified the ſame as LAW with us, was

was transferred [g] very naturally (for language always conforms itſelf to the genius, temper, and manners of a nation) to ſignify a country, diſtrict, or province; theſe good people having no notion of any inhabited country not governed by laws. Thus: DÆNA-LAGA; MERKENA-LAGA;

[g] This caſual remark ſeems to determine a famous diſpute among the Antiquaries on the ſubject before us. Biſhop NICOLSON attended ſo little to this tralatetious uſe of words, in which all languages abound, that finding LAGA in ſeveral places ſignified a *country*, he would needs have it that CAMDEN, LAMBARDE, SPELMAN, COWELL, SELDEN, and all our beſt Antiquaries, were miſtaken, when they ſuppoſed *Laga* ever ſignified, in the compoſitions here mentioned, a *law*. However, his adverſaries among the Antiquaries were even with him; and finding that *Laga*, in theſe compoſitions, did ſignify a law in ſeveral places of our ancient laws, hiſtorians, and lawyers, deny that it ever ſignifies a *country*. Each indeed had a conſiderable object in view; the one was bent on overthrowing a ſyſtem; the other on ſupporting it; namely, that famous threefold body of laws, the *Daniſh*, *Mercian*, and *Weſt-Saxon*. It muſt be owned, the biſhop could not overthrow the common ſyſtem, without running into his extreme: it ſeems, his opponents might have ſupported it, without running into theirs.

and WESTSEXENA-LAGA, were not only uſed in their laws and hiſtory to ſignify the *laws* of the *Danes*, *Mercians*, and *Weſt-Saxons*, but the *countries* likewiſe. Of which uſage I could produce to you many inſtances, if I did not preſume that, for ſo ſmall a matter as this, my mere word might be taken.

You ſee then how fully the ſpirit of liberty poſſeſſed the very language of our *Saxon* forefathers. And it might well do ſo; for it was of the eſſence of the *German* conſtitutions; a juſt notion of which (ſo uniform was the genius of the brave people that planned them) may be gathered, you know, from what the *Roman* hiſtorians, and, above all, from what TACITUS hath recorded of them.

BUT I forbear ſo common a topic: and, beſides, I think myſelf acquitted of this taſk, by the prudent method, which the defenders of the regal power have themſelves

themſelves taken in conducting this controverſy. For, as conſcious of the teſtimony which the *Saxon* times are ready to bear againſt them, they are wiſe enough to lay the foundation of their ſyſtem in the CONQUEST. They look no higher than that event for the origin of the *conſtitution*, and think they have a notable advantage over us in deducing their notion of the *Engliſh* government from the form it took in the hands of the *Norman* invader. But is it not pleaſant to hear theſe men calumniate the improvements that have been made from time to time in the plan of our civil conſtitution with the name of *uſurpations*, when they are not aſhamed to erect the *conſtitution* itſelf on what *they* muſt eſteem, at leaſt, a great and manifeſt uſurpation?

BP. BURNET.

CONQUEST, I ſuppoſe, in their opinion, gives *right*. And ſince an inquiry into the origin of a conſtitution requires

that we fix *ſomewhere*, conſidering the vaſt alterations introduced by the Conqueſt, and that we have never pretended to reject, but only to improve and complete, the duke of NORMANDY's eſtabliſhment; I believe it may be as proper to ſet out from that æra as from any other.

SIR J. MAYNARD.

YOUR lordſhip does not imagine that I am about to excuſe myſelf from cloſing with them, even on their own terms. I intended that queſtion only as a reproach to the perſons we have to deal with; who, when a ſucceſsful event makes, or but ſeems to make, for their idol of an abſolute monarchy, call it a regular eſtabliſhment: whereas a revolution brought about by the juſteſt means, if the cauſe of liberty receive an advantage by it, ſhall be reviled by the name of uſurpation. But let them employ what names they pleaſe, provided their facts be well grounded.

grounded. We will allow them to dignify the *Norman* ſettlement with the title of CONSTITUTION. What follows? That *deſpotiſm* was of the eſſence of that conſtitution? So they tell us indeed; but without one word of proof, for the aſſertion. For what! do they think the name of conqueſt, or even the *thing*, implies an abſolute unlimited dominion? Have they forgotten that WILLIAM's claim to the crown was, not *conqueſt* (though it enabled him to ſupport his claim), but *teſtamentary ſucceſſion*: a title very much in the taſte of that time [*b*], and extremely reverenced by our *Saxon* anceſtors? That, even waving this ſpecious claim, he condeſcended to accept the crown, as a free gift; and by his coronation-oath ſubmitted himſelf to the ſame terms of adminiſtration, as his predeceſſors? And that, in one word, he confirmed the *Saxon* laws, at leaſt before

[*b*] See *Hiſtorical Law-Tracts*, vol. i. p. 294.

he

he had been many years in poſſeſſion of his new dignity [*i*]?

Is there any thing in all this that favours the notion of his erecting himſelf, by the ſole virtue of his victory at *Haſtings*, into an abſolute lord of the conquered country? Is it not certain that he bound himſelf, as far as oaths and declarations could bind him, to govern according to law; that he could neither touch the honours nor eſtates of his ſubjects but by legal trial; and that even the many forfeitures in his reign are an evidence of his proceeding in that method?

STILL we are told "of his parcelling out the whole land, upon his own terms, to his followers;" and are inſulted "with

[*i*] MILTON did not forget to obſerve, in his *Tenure of kings and magiſtrates*, That WILLIAM the *Norman*, though a Conqueror, and not unſworn at his Coronation, was compelled a ſecond time to take oath at *St. Albans*, ere the people would be brought to yield obedience." Vol. i. *of his Proſe works*, 4to, 1753, p. 345.

his

his famous inſtitution of feudal tenures." But what if the *former* of theſe aſſertions be foreign to the purpoſe at leaſt, if not falſe; and the *latter* ſubverſive of the very ſyſtem it is brought to eſtabliſh? I think, I have reaſon for putting both theſe queſtions. For, what if he parcelled out moſt, or all, of the lands of *England* to his followers? The fact has been much diſputed. But be it, as they pretend, that the property of all the ſoil in the kingdom had changed hands: What is that to us, who claim under our *Norman*, as well as *Saxon*, anceſtors? For the queſtion, you ſee, is about the form of government ſettled in this nation at the time of the Conqueſt. And they argue with us, from a ſuppoſed act of tyranny in the Conqueror, in order to come at that ſettlement. The *Saxons*, methinks, might be injured, oppreſſed, enſlaved; and yet the conſtitution, tranſmitted to us through his own *Normans*, be perfectly free.

two Roses, and perhaps before, they loſt ſight indeed of this prize. But no ſooner was the public tranquillity reſtored, and the contending claims united in Henry VII. than the old ſpirit revived. A legal conſtitution became the conſtant object of the people; and, though not always avowed, was, in effect, as conſtantly ſubmitted to by the ſovereign.

It may be true, perhaps, that the ability of *one* prince [*k*], the imperious carriage of *another* [*l*], and the generous intrigues of a *third* [*m*]; but, above all, the condition of the times, and a ſenſe of former miſeries, kept down the ſpirit of liberty for ſome reigns, or diminiſhed, at leaſt, the force and vigour of its operations. But a paſſive ſubjection was never acknowledged, certainly never demanded as matter of right, till Elizabeth now and then, and King James, by talking

[*k*] Henry VII. [*l*] Henry VIII.
[*m*] Elizabeth.

continually

BUT their *other* allegation is ſtill more unfortunate. "He inſtituted, they ſay, the feudal law." True. But the feudal law, and abſolute dominion, are two things; and, what is more, perfectly incompatible.

I TAKE upon me to ſay, that I ſhall make out this point in the cleareſt manner. In the mean time, it may help us to underſtand the nature of the feudal eſtabliſhment, to conſider the practice of ſucceeding times. What that was, our adverſaries themſelves, if you pleaſe, ſhall inform us. Mr. SOMERS hath told their ſtory very fairly; which yet amounts only to this, "That, throughout the *Norman* and *Plantagenet* lines, there was one perpetual conteſt between the prince and his feudatories for law and liberty:" an evident proof of the light in which our forefathers regarded the *Norman* conſtitution. In the competition of the two

two ROSES, and perhaps before, they loſt fight indeed of this prize. But no ſooner was the public tranquillity reſtored, and the contending claims united in HENRY VII. than the old ſpirit revived. A legal conſtitution became the conſtant object of the people; and, though not always avowed, was, in effect, as conſtantly ſubmitted to by the ſovereign.

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[*k*] HENRY VII. [*l*] HENRY VIII.
[*m*] ELIZABETH.

continually

continually in this ſtrain, awakened the national jealouſy; which proved ſo uneaſy to himſelf, and, in the end, ſo fatal to his family.

I CANNOT allow myſelf to mention theſe things more in detail to you, who have ſo perfect a knowledge of them. One thing only I inſiſt upon, that, without connecting the ſyſtem of liberty with that of prerogative in our notion of the *Engliſh* government, the tenor of our hiſtory is perfectly unintelligible; and that no conſiſtent account can be given of it, but on the ſuppoſition of a LEGAL LIMITED CONSTITUTION.

MR. SOMERS.

YET that conſtitution, it will be thought, was at leaſt ill defined, which could give occaſion to ſo many fierce diſputes, and thoſe carried on through ſo long a tract of time, between the crown and the ſubject.

SIR

SIR J. MAYNARD.

THE fault, if there was one, lay in the original plan of the conſtitution itſelf; as you will clearly ſee when I have opened the nature of it, that is, when I have explained the genius, views, and conſequences of the FEUDAL POLICY. It muſt, however, be affirmed, that this policy was founded in the principles of freedom, and was, in truth, excellently adapted to an active, fierce, and military people; ſuch as were all thoſe to whom theſe weſtern parts of *Europe* have been indebted for their civil conſtitutions. But betwixt the burdenſome ſervices impoſed on the ſubject by this tenure, or which it gave at leaſt the pretence of exacting from him, and the too great reſtraint which an unequal and diſproportioned allotment of feuds to the greater barons laid on the ſovereign; but above all, by narrowing the plan of liberty too much; and, while it ſeemed

to provide for the dependency of the prince on one part of his ſubjects, by leaving both him and them in a condition to exerciſe an arbitrary dominion over all others: hence it came to paſs that the feudal policy naturally produced the ſtruggles and convulſions, you ſpoke of, till it was ſeen in the end to be altogether unſuited to the circumſtances of a rich, civilized, and commercial people. The event was, that the inconveniences, perceived in this form of government, gradually made way for the introduction of a better; which was not, however, ſo properly a new form, as the old one amended and ſet right; cleared of its miſchiefs and inconſiſtencies, but conducted on the ſame principles as the former, and purſuing the ſame end, though by different methods.

It is commonly ſaid, "That the feudal tenures were introduced at the Conqueſt." But how are we to underſtand this aſſertion?

tion? Certainly, not as if the whole ſyſtem of military ſervices had been created by the Conqueror; for they were eſſential to all the *Gothic* or *German* conſtitutions. We may ſuppoſe then, that they were only new-modelled by this great prince. And who can doubt that the form, which was now given to them, would be copied from that which the *Norman* had ſeen eſtabliſhed in his own country? It would be copied then from the proper FEUDAL FORM; the eſſence of which conſiſted in the perpetuity of the feud [*n*]; whereas theſe military tenures had been elſewhere temporary only, or revocable at the will of the lord.

BUT to enter fully into the idea of the feudal conſtitution; to ſee at what time, and in what manner, it was introduced: above all, to comprehend the rea-

[*n*] PROPRIA FEUDI NATURA EST UT SIT PERPETUA. CUJACIUS, LITTLETON.

ſons that occaſioned this great change; it will be convenient to look back to the eſtate of *France*, and eſpecially of *Normandy*, where this conſtitution had, for ſome years, taken place before it was transferred to us at the Conqueſt.

UNDER the firſt princes of the *Carlovingian* line, the lands of *France* were of two kinds, ALLODIAL, and BENEFICIARY. The allodial, were eſtates of inheritance; the perſons poſſeſſing them, were called HOMMES LIBRES. The beneficiary, were held by grants from the crown. The perſons holding immediately under the emperor, were called LEUDES; the ſub-tenants, VASSALS.

FURTHER, the allodial lands were alienable, as well as hereditary. The beneficiary were properly neither. They were held for life, or a term of years, at the will of the lord, and reverted to him

on the expiration of the term for which they were granted.

I DO not ſtay to explain theſe inſtitutions minutely. It is of more importance to ſee the alterations that were afterwards made in them. And the FIRST will be thought a ſtrange one.

THE poſſeſſors of allodial lands, in *France*, were deſirous to have them changed into *tenures*. They who held of the crown *in capite* were entitled to ſome diſtinctions and privileges, which the allodial lords wiſhed to obtain; and therefore many of them ſurrendered their lands to the emperor, and received them again of him, in the way of *tenure*. This practice had taken place occaſionally from the earlieſt times: but under CHARLES the Bald, it became almoſt general; and *free-men* not only choſe to hold of the emperor, but of other lords. This laſt was firſt allowed, in conſequence

of a treaty between the three brothers, after the battle of *Fontenay* in 847.

But theſe *free-men* were not ſo ill adviſed as to make their eſtates precarious, or to accept a life eſtate inſtead of an inheritance. It was requiſite they ſhould hold for a perpetuity. And this I take to have been the true origin of hereditary feuds. Moſt probably, in thoſe dangerous times, little people could not be ſafe without a lord to protect them: and the price of this protection was the change of propriety into tenure.

The ſecond change was by a law made under the ſame emperor in the year 877, the laſt of his reign. It was then enacted, that beneficiary eſtates held under the crown ſhould deſcend to the ſons of the preſent poſſeſſors: yet not, as I conceive, to the eldeſt ſon; but to him whom the emperor ſhould chuſe: nor did this law affect the eſtates only,

but

but *offices*, which had hitherto been alſo beneficiary; and ſo the ſons of counts, marquiſes, *&c.* (which were all names of offices, not titles of honour) were to ſucceed to the authority of their fathers, and to the benefice annexed to it. The new feuds, created in allodial lands, had, I ſuppoſe, made the emperor's tenants deſirous of holding on the ſame terms: and the weakneſs of the reigning prince enabled them to ſucceed in this firſt ſtep, which prepared the way for a revolution of ſtill more importance. For,

THE THIRD change, by which the inheritance of beneficiary lands and offices was extended to perpetuity, and the poſſeſſion rendered almoſt independent of the crown, was not, we may be ſure, effected at once, but by degrees. The family of CHARLEMAGNE loſt the empire: they reſiſted with great difficulty the incurſions of the *Normans*; and, in the year 911, *Normandy* was granted to

them as an hereditary fee. The great lords made their advantage of the public calamities; they defended the king on what terms they pleaſed; if not complied with in their demands, they refuſed their aſſiſtance in the moſt critical conjunctures: and before the acceſſion of HUGH CAPET, had entirely ſhaken off their dependence on the crown. For it is, I think, a vulgar miſtake to ſay, that this great revolution was the effect of HUGH's policy. On the contrary, the independence of the nobles, already acquired, was, as it ſeems to me, the cauſe of his ſucceſs. The prince had no authority left, but over his own demeſnes; which were leſs conſiderable than the poſſeſſions of ſome of his nobles. HUGH had one of the largeſt fiefs; and for this reaſon, his uſurpation added to the power of the crown, inſtead of leſſening it, as is commonly imagined. But to bring back the feuds of the other nobles to their former precarious condition was

was a thing impoſſible: his authority was partly ſupported by ſuperior wiſdom, and partly by ſuperior ſtrength, his vaſſals being more numerous than thoſe of any other lord.

I CANNOT tell if theſe foreigners, when they adopted the feudal plan, were immediately aware of all the conſequences of it. An hereditary tenure was doubtleſs, a prodigious acquiſition; yet the advantage was ſomething counter-balanced by the great number of impoſitions which the nature of the change brought with it. Theſe impoſitions are what, in reſpect of the lord, are called his FRUITS of tenure; ſuch as WARDSHIP, MARRIAGE, RELIEF, and other ſervices: and were the neceſſary conſequence of the king's parting with his arbitary diſpoſal of theſe tenures. For now that the right of inheritance was in the tenant, it ſeemed but reaſonable, and, without this proviſion, the

feudal policy could not have obtained its end, that the prince, in theſe ſeveral ways, ſhould ſecure to himſelf the honour, ſafety, and defence, which the very nature of the conſtitution implied and intended. Hence hereditary feuds were very reaſonably clogged with the obligations I have mentioned; which, though trifling in compariſon with the diſadvantages of a precarious tenure, were yet at leaſt ſome check on the independency acquired. However, theſe ſervices, which were due to the king under the new model, were alſo due to the tenant in chief from thoſe who held of him by the like tenure. And ſo the barons, or great proprietaries of land, conſidering more perhaps the ſubjection of their own vaſſals, than that by which themſelves were bound to their ſovereign, reckoned theſe burdens as nothing, with reſpect to what they had gained by an hereditary ſucceſſion.

THE example of theſe *French* feudataries, we may ſuppoſe, would be catching. We accordingly find it followed, in due time, in *Germany*; where CONRAD II [o] granted the like privilege of *ſucceſſive* tenures, and at the preſſing inſtance of his tenants.

I THOUGHT it material to remind you of theſe things; becauſe they prove the feudal inſtitution on the continent to have been favourable to the cauſe of liberty; and becauſe it will abate our wonder to find it ſo readily accepted and ſubmitted to here in *England*.

MR. SOMERS.

THE account you have given, and, I dare ſay, very truly, of the origin of feuds in *France* and *Germany*, is ſuch as ſhews them to have been an extenſion of the people's liberty. There is no queſtion that hereditary alienable eſtates

[o] CRAIG's *Jus feudale*, lib. i. p. 21. *Lond.* 1655.

have vaſtly the preference to beneficiary. But the caſe, I ſuſpect, was different with us in *England*. The great offices of ſtate, indeed, in this country, as well as in *France*, were beneficiary. But, if I do not miſtake, the lands of the *Engliſh*, except only the church-lands, were all allodial. And I cannot think it could be for the benefit of the *Engliſh* to change their old *Saxon* poſſeſſions, ſubject only to the famous triple obligation, for theſe new and burdenſome tenures.

SIR J. MAYNARD.

STRANGE as it may appear, we have yet ſeen that the *French* did not ſcruple to make that exchange even of their allodial eſtates. But to be fair, there was a great difference, as you well obſerve, in the circumſtances of the two people. All the lands in *England* were, I believe, allodial, in the *Saxon* times: while a very conſiderable proportion of thoſe in *France* were beneficiary.

ANOTHER

ANOTHER difference, alſo, in the ſtate of the two countries, is worth obſerving. In *France*, the allodial lands (though conſiderable in quantity) were divided into ſmall portions. In *England*, they ſeem to have been in few hands; the greater part poſſeſſed by the King and his *Thanes*; ſome ſmaller parcels by the leſſer *Thanes*; and a very little by the *Ceorles*. The conſequence was, that, though the allodial proprietors in *France* were glad to renounce their property for tenure, in order to ſecure the protection they much wanted; yet with us, as you ſay, there could not be any ſuch inducement for the innovation. For, the lands being poſſeſſed in large portions by the nobility and gentry, the allodial lords in *England* were too great to ſtand in need of protection. Yet from this very circumſtance, fairly attended to, we ſhall ſee that the introduction of the feudal tenures was neither difficult nor unpopular.

lar. The great proprietors of land were, indeed, too free and powerful, to be bettered by this change. But their tenants, that is, the bulk of the people, would be gainers by it. For theſe tenants were, I believe, to a man beneficiaries. The large eſtates of the *Thanes* were granted out in ſmall portions to others, either for certain quantities of corn or rent, reſerved to the lord, or on condition of ſtipulated ſervices. And theſe grants, of whichever ſort they were, were either at pleaſure, or at moſt for a limited term. So that, though the proprietors of land in *England* were ſo much ſuperior to thoſe in *France*; yet the tenants of each were much in the ſame ſtate; that is, they poſſeſſed beneficiary lands on ſtipulated conditions.

When, therefore, by right of forfeiture, the greater part of the lands in *England* fell, as they of courſe would do, into the power of the king (for they were

were in few hands, and thoſe few had either fought at *Haſtings*, or afterwards rebelled againſt him), it is eaſy to ſee that the people would not be diſpleaſed to find themſelves, inſtead of beneficiary tenants [*p*], feudatary proprietors.

I SAY this on ſuppoſition that theſe great forfeited eſtates and ſignories, ſo bountifully beſtowed by the Conqueror on his favourite *Normans*, were afterwards, many of them at leaſt, granted out in ſmaller parcels to *Engliſh* ſub-tenants. But if theſe ſub-tenants were alſo *Normans* (though the caſe of the *Engliſh* or old *Saxon* freeholders was then very hard), the change of allodial into feudatary eſtates is the more eaſily accounted for.

[*p*] This account of the *Saxon* benefices is much confirmed by the famous charter of Biſhop OSWALD, and the comment of Sir H. SPELMAN upon it. See his diſcourſe on FEUDS and TENURES.

THE

THE main difficulty would be with the churchmen; who (though the greateſt, and moſt of them were, perhaps, *Normans* too) were well acquainted with the *Saxon* laws, and for ſpecial reaſons were much devoted to them. They were ſenſible that their poſſeſſions had been held, in the *Saxon* times, in FRANC-ALMOIGN: a ſort of tenure, they were not forward to give up for this of *feuds*. 'Tis true, the burdens of theſe tenures would, many of them, not affect them. But then neither could they reap the principal fruit of them, the fruit of inheritance. They, beſides, conſidered every reſtraint on their privileges as impious; and took the ſubjection of the eccleſiaſtic to the ſecular power, which the feudal eſtabliſhment was to introduce, for the vileſt of all ſervitudes. Hence the churchmen were, of all others, the moſt averſe from this law [q]. And their

[q] MATTHEW PARIS gives us the following account of this matter—"Epiſcopatus et Abbatias omnes,

their oppoſition might have given the conqueror ſtill more trouble, if the ſuppreſſion of the great northern rebellion had not furniſhed him with the power, and (as many of them had been deeply engaged in it) with the pretence, to force it upon them. And thus, in the end, it prevailed univerſally, and without exception.

I WOULD not go further into the hiſtory of theſe tenures. It may appear from the little I have ſaid of them, that the feudal ſyſtem was rather improved and corrected by the duke of NORMANDY, than originally planted by him in this

omnes, quæ baronias tenebant, et eatenus ab omni ſervitute ſæculari libertatem habuerant, ſub ſervitute ſtatuit militari, inrotulans ſingulos epiſcopatus et abbatias pro voluntate ſuâ, quot milites ſibi et ſuccellioribus ſuis, hoſtilitatis tempore, voluit à ſingulis exhiberi. Et ROTULOS HUJUS ECCLESIASTICÆ SERVITUTIS ponens in theſauris, multos viros eccleſiaſticos HUIC CONSTITUTIONI PESSIMÆ reluctantes, a regno fugavit."

HIST. ANG. WILLIELMUS CONQUÆSTOR.

kingdom:

kingdom: that the alteration made in it was favourable to the public intereſt; and that our *Saxon* liberties were not ſo properly reſtrained, as extended by it. It is of little moment to inquire whether the nation was won, or forced, to a compliance with this ſyſtem. It is enough to ſay, that, as it was accepted by the nation, ſo it was in itſelf no ſervile eſtabliſhment, but eſſentially founded in the principles of liberty. The duties of lord and feudatary were reciprocal and acknowledged: ſervices on the one part, and protection on the other. The inſtitution was plainly calculated for the joint-intereſt [r] of both parties, and the benefit of the community; the proper

[r] The learned CRAIG, who has written ſo largely and accurately on the feudal law, was ſo far from ſeeing any thing ſervile in it, that he ſays, "The foundations of this diſcipline are laid in the moſt generous of all conſiderations, thoſe of GRATITUDE. *Hujus feudalis diſciplinæ fundamenta è gratitudine et ingratitudine deſcendunt.*" EPIST. NUNCUP. to K. JAMES.

notion

notion of the feudal ſyſtem being that "of a confederacy between a number of military perſons, agreeing on a certain limited ſubordination and dependence on their chief, for the more effectual defence of his and their lives, territories, and poſſeſſions."

MR. SOMERS.

I HAVE nothing to object to your account of the feudal conſtitution. And I think you do perfectly right, to lay the main ſtreſs on the general nature and genius of it; as by this means you cut off thoſe fruitleſs altercations, which have been raiſed, concerning the perſonal character of the *Norman* Conqueror. Our concern is not with him, but with the government he eſtabliſhed. And if that be free, no matter whether the founder of it were a tyrant. But, though I approve your method, I doubt there is ſome defect in your argument. *Freedom* is a term of much latitude. The *Norman* conſtitution may be free in one

ſenſe, as it excludes the ſole arbitrary dominion of one man; and yet ſervile enough in another, as it leaves the government in few hands. For it follows, from what I underſtand of the feudal plan, that though its genius be indeed averſe from abſolute monarchy, yet it is indulgent enough to abſolute *ariſtocracy*. And the notion of each is equally remote from what we conceive of true *Engliſh* liberty.

SIR J. MAYNARD.

IT is true, the proper feudal form, eſpecially as eſtabliſhed in this kingdom, was in a high degree oligarchical. It would not otherwiſe, perhaps, have ſuited to the condition of thoſe military ages. Yet the principles it went upon, were thoſe of public liberty, and generous enough to give room for the extenſion of the ſyſtem itſelf, when a change of circumſtances ſhould require it.—But your objection will beſt be anſwered by looking

looking a little more diſtinctly into the nature of theſe tenures.

I took notice that the feudal ſyſtem ſubjected the CHURCH more immediately to the civil power: and laid the foundation of many ſervices and fruits of tenure to which the LAY-FEUDATARIES in the *Saxon* times had been altogether ſtrangers. It is probable that all the conſequences of this alteration were not foreſeen. Yet the churchmen were pretty quick-ſighted. And the diſlike, they had conceived of the new eſtabliſhment, was the occaſion of thoſe ſtruggles, which continued ſo long between the mitre and crown, and which are ſo famous more eſpecially in the early parts of our hiſtory. The cauſe of theſe eccleſiaſtics was a bad one. For their aim was, as is rightly obſerved by the advocates for the prerogative, to aſſert an independency on the ſtate; and for that purpoſe the pope was made a party in the

diſpute; by whoſe intrigues it was kept up in one ſhape or other till the total renunciation of the papal power. Thus far, however, the feudal conſtitution cannot be blamed. On the contrary, it was highly ſerviceable to the cauſe of liberty, as tending only to hold the eccleſiaſtic, in a due ſubordination to the civil, authority.

The ſame thing cannot be ſaid of the other inſtance, I mean the *fruits of tenure*, to which the lay-fees were ſubjected by this ſyſtem. For however reaſonable, or rather neceſſary, thoſe *fruits* might be, in a feudal ſenſe, and for the end to which the feudal eſtabliſhment was directed, yet, as the *meaſure* of theſe fruits, as well as the manner of exacting them, was in a good degree arbitrary, and too much left to the diſcretion of the ſovereign, the practice, in this reſpect, was ſoon found by the tenants in chief to be an intolerable grievance. Hence that other

other conteſt, ſo memorable in our hiſtory, betwixt the king and his barons: in which the former, under the colour of maintaining his feudal rights, laboured to uſurp an abſolute dominion over the perſons and properties of his vaſſals; and the latter, impatient of the feudal burdens, or rather of the king's arbitrary exactions under pretence of them, endeavoured to redeem themſelves from ſo manifeſt an oppreſſion.

It is not to be denied, that, in the heat of this conteſt, the barons ſometimes carried their pretenſions ſtill further, and laboured in their turn to uſurp on the crown, in revenge for the oppreſſions they had felt from it. However, their firſt contentions were only for a mitigation of the feudal ſyſtem. It was not the character of the *Norman* princes to come eaſily into any project that was likely to give the leaſt check to their pretenſions. Yet the grievances, complained

of, were in part removed, in part moderated, by HENRY the firſt's and many other ſucceſſive charters: though the laſt blow was not given to theſe feudal ſervitudes till after the Reſtoration, when ſuch of them as remained, and were found prejudicial to the liberty of the ſubject, were finally aboliſhed.

THUS we ſee that one eſſential defect in the feudal policy, conſidered not as a military, but civil inſtitution, was, the too great power it gave the ſovereign in the arbitrary impoſitions, implied in this tenure. ANOTHER was accidental. It aroſe from the diſproportionate allotment of thoſe feuds, which gave the greater barons an aſcendant over the prince, and was equally unfavourable to the cauſe of liberty. For the bounty of the duke of NORMANDY, in his diſtribution of the forfeited eſtates and ſignories to his principal officers, had been ſo immenſe,

immenſe [s], that their ſhare of influence in the ſtate was exceſſive, and intrenched too much on the independency of the crown and the freedom of the people. And this undue poize in the conſtitution, as well as the tyranny of our kings, occaſioned the long continuance of thoſe civil wars, which for many ages harraſſed and diſtreſſed the nation. The evil, however, in the end, brought on its own remedy. For theſe princely houſes being much weakened in the courſe of the quarrel, HENRY VII ſucceeded, at length, to the peaceable poſſeſſion of the crown. And by the policy of this prince, and that of his ſucceſſor, the barons were

[s] This bounty in ſo wiſe a prince as WILLIAM will be thought ſtrange. I believe it may be, in part, accounted for, from what is obſerved above of the *Saxon* allodial lords. Theſe had poſſeſſed immenſe eſtates. And, as they fell in upon forfeiture, the great *Norman* adventurers would of courſe expect to come into the entire ſucceſſion.—Perhaps too, in that confuſion of affairs, the prince might not always, himſelf, be apprized of the extent and value of theſe poſſeſſions.

brought ſo low as to be quite diſabled from giving any diſturbance to the crown for the future.

It appears then that two great defects in the feudal plan of government, as ſettled amongſt us, were, at length, taken away. But a THIRD, and the greateſt defect of all, was the narrowneſs of the plan itſelf, I mean when conſidered as a ſyſtem of CIVIL polity; for, in its primary martial intention, it was perfectly unexceptionable.

To explain this matter, which is of the higheſt importance, and will furniſh a direct anſwer to Mr. SOMERS' objection, we are to remember that in the old feudal policy the king's barons, that is, ſuch as held *in capite* of the crown by barony or knight's ſervice, were the king's, or rather the kingdom's, great council. No public concerns could be regularly tranſacted, without their conſent;

ſent [t]; though the leſſer barons, or tenants by knight's ſervice, did not indeed ſo conſtantly appear in the king's court, as the greater barons; and though the public buſineſs was ſometimes even left to the ordinary attendants on the king, moſt of them churchmen. It appears that, towards the end of the Conqueror's reign, the number of theſe tenants in chief was about 700; who, as the whole property of the kingdom was, in effect, in their power, may be thought a no unfit repreſentative (though this be no proper *feudal* idea) of the whole nation. It was ſo, perhaps, in thoſe rude and warlike times, when the ſtrength of the nation lay entirely in the ſoldiery; that is, in thoſe who held by military ſervices, either immediately of the crown, or of the meſne lords. For the remainder of the people, whom

[t] The law of EDWARD the Confeſſor is expreſs to this purpoſe, and it was ratified by the Conqueror—"Debet rex omnia ritè facere in regno et per judicium procerum regni." Sir H. SPELMAN of Parliaments, p. 58.

they

they called tenants in ſocage, were of ſmall account; being conſidered only in the light of ſervants, and contributing no otherwiſe to the national ſupport than by their cultivation of the ſoil, which left their maſters at leiſure to attend with leſs diſtraction on their military ſervices. At leaſt, it was perfectly in the genius of the feudal, that is, military conſtitutions, to have little regard for any but the men of arms; and, as every other occupation would of courſe be accounted baſe and ignoble, it is not to be wondered that ſuch a difference was made between the condition of *prædial* and *military* tenures.

HOWEVER, a policy, that excluded ſuch numbers from the rank and privileges of citizens, was ſo far a defective one. And this defect would become more ſenſible every day, in proportion to the growth of arts, the augmentation of commerce, and the ſecurity the nation found itſelf in from foreign dangers. The

The antient military eſtabliſhment would now be thought unjuſt, when the excluſive privileges of the ſwordſmen were no longer ſupported by the neceſſities of the public, and when the wealth of the nation made ſo great a part of the force of it. Hence aroſe an important change in the legiſlature of the kingdom, which was much enlarged beyond its former limits. But this was done gradually; and was more properly an extenſion than violation of the ancient ſyſtem.

FIRST, the number of tenants in chief, or the king's freeholders, was much increaſed by various cauſes, but chiefly by the alienation which the greater barons made of their fees. Such alienation, though under ſome reſtraint, ſeems to have been generally permitted in the *Norman* feuds; I mean, till MAGNA CHARTA and ſome ſubſequent ſtatutes laid it under particular limitations. But, whether the practice were regular or

not, it certainly prevailed from the earlieſt times; eſpecially on ſome more extraordinary occaſions. Thus, when the faſhionable madneſs of the CROISADES had involved the greater barons in immenſe debts, in order to diſcharge the expences of theſe expeditions, they alienated their fees, and even diſmembered them; that is, they parted with their right in them, and made them over in ſmall parcels to others, to hold of the ſuperior lord. And what theſe barons did from neceſſity, the crown itſelf did, out of policy: for the *Norman* princes, growing ſenſible of the inconvenience of making their vaſſals too great, diſpoſed of ſuch eſtates of their barons as fell in to them by forfeiture, and were not a few, in the ſame manner. The conſequence of all this was, that, in proceſs of time, the leſſer military tenants *in capite* multiplied exceedingly. And, as many of them were poor, and unequal to a perſonal attendance in the court of their lord,

lord, or in the common council of the kingdom (where of right and duty they were to pay their attendance), they were willing, and it was found convenient to give them leave, to appear in the way of *repreſentation*. And this was the origin of what we now call THE KNIGHTS OF THE SHIRES; who, in thoſe times, were appointed to repreſent, not all the free-holders of counties, but the leſſer tenants of the crown only. For theſe, not attending in perſon, would otherwiſe have had no place in the king's council.

THE riſe of CITIZENS AND BURGESSES, that is, repreſentatives of the cities and trading towns, muſt be accounted for ſomewhat differently. Theſe had originally been in the juriſdiction, and made part of the demeſnes, of the king and his great lords. The reaſon of which appears from what I obſerved of the genius of the feudal policy. For, little account being had of any but martial

tial men, and trade being not only diſhonourable, but almoſt unknown in thoſe ages; the lower people, who lived together in towns, moſt of them ſmall and inconſiderable, were left in a ſtate of ſubjection to the crown, or ſome other of the barons, and expoſed to their arbitrary impoſitions and talliages.

But this condition of burghers, as it ſprang from the military genius of the nation, could only be ſupported by it. When that declined therefore, and, inſtead of a people of ſoldiers, the commercial ſpirit prevailed, and filled our towns with rich traders and merchants, it was no longer reaſonable, nor was it the intereſt of the crown, that theſe communities and bodies of men ſhould be ſo little regarded. On the contrary, a large ſhare of the public burdens being laid upon them, and the frequent neceſſities of the crown, eſpecially in foreign wars, or in the king's contentions with his barons,

barons, requiring him to have recourſe to their purſes, it was naturally brought about that thoſe, as well as the tenants *in capite*, ſhould, in time, be admitted to have a ſhare in the public councils.

I DO not ſtay to trace the ſteps of this change. It is enough to ſay, that it aroſe inſenſibly and naturally out of the growing wealth and conſequence of the trading towns; the convenience the king found in drawing conſiderable ſums from them, with greater eaſe to himſelf, and leſs offence to the people; and, perhaps, from the view of leſſening by their means the exorbitant power and influence of the barons.

FROM theſe, or the like reaſons, the great towns and cities, that before were royal demeſnes, part of the king's private patrimony, and talliable by him at pleaſure, were allowed to appear in his council by their deputies, to treat with him

him of the proportion of taxes to be raiſed on them, and, in a word, to be conſidered in the ſame light as the other members of that great aſſembly.

I DO not inquire when this great alteration was firſt made. I find it ſubſiſting at leaſt under EDWARD III. And from that time, there is no diſpute but that the legiſlature, which was originally compoſed of the ſovereign and his feudal tenants, included alſo the repreſentatives of the counties, and of the royal towns and cities. To ſpeak in our modern ſtyle, the HOUSE OF COMMONS was, now, formed. And by this addition, the glorious edifice of *Engliſh* liberty was completed.

I AM ſenſible, I muſt have wearied you with this deduction, which can be no ſecret to either of you. But it was of importance to ſhew, that the conſtitution of *England*, as laid in the feudal tenures, was

was eſſentially free; and that the very changes it hath undergone, were the natural and almoſt unavoidable effects of thoſe tenures. So that what the adverſaries of liberty object to us, as uſurpations on the regal prerogative, are now ſeen to be either the proper reſult of the feudal eſtabliſhment, or the moſt juſt and neceſſary amendments of it.

BP. BURNET.

I HAVE waited with much pleaſure for this concluſion, which entirely diſcredits the notion of an abſolute, deſpotic government. I will not take upon me to anſwer for Mr. SOMERS, whoſe great knowledge in the laws and hiſtory of the kingdom enables him to ſee further into the ſubject than I do; but to me nothing appears more natural or probable than this account of the riſe and progreſs of the *Engliſh* monarchy. One difficulty, in particular, which ſeemed to embarraſs this inquiry, you have entirely removed,

by ſhewing how, from the ariſtocratical form which prevailed in the earlier times, the more free and popular one of our days hath gradually taken place, and that without any violence to the antient conſtitution [*u*].

MR. SOMERS.

AT leaſt, my lord, with ſo little, that we may, perhaps, apply to the *Engliſh* government what the naturaliſts obſerve of the HUMAN BODY [*w*]; that, when it arrives at its full growth, it does not perhaps retain a ſingle particle of the matter it originally ſet out with; yet the

[*u*] M. DE MONTESQUIEU obſerves of the Gothic government—"Il fut d'abord melé de l'ariſtocratie, et de la monarchie. Il avoit cet inconvenient, "que le bas-peuple y étoit eſclave: *C'étoit un bon "gouvernment, qui avoit en ſoi la capacité de devenir "meilleur.*" [l. xi. c. 8.]—the very idea, which is here inculcated.

[*w*] See old FORTESCUE, in his book *De laudibus legum Angliæ*, where this ſort of analogy is purſued at length through a great part of the XIIIth chapter.

alteration

alteration hath been made ſo gradually and imperceptibly, that the ſyſtem is accounted the ſame under all changes. Juſt ſo, I think, we ſeem to have ſhaken off the conſtituent parts of the FEUDAL CONSTITUTION; but, liberty having been always the informing principle, time and experience have rather completed the old ſyſtem, than created a new one: and we may account the preſent and *Norman* eſtabliſhment all one, by the ſame rule as we ſay that HERCULES, when he became the deliverer of oppreſſed nations, was ſtill the ſame with him who had ſtrangled ſerpents in his cradle.

SIR J. MAYNARD.

I KNOW not what fanciful ſmiles your younger wit may delight in. I content myſelf with obſerving, that the two great points, which they, who deny the liberty of the ſubject, love to inculcate, and on which the plauſibility of all their reaſonings depends, are, THE SLAVISH NATURE

OF THE FEUDAL CONSTITUTION, and THE LATE RISE OF THE HOUSE OF COMMONS. And I have taken up your time to ſmall purpoſe, if it doth not now appear, that the *former* of theſe notions is falſe, and the *latter* impertinent. If the learned inquirers into this ſubject had conſidered that the queſtion is concerning the freedom itſelf of our conſtitution, and not the moſt convenient form under which it may be adminiſtered, they muſt have ſeen that the feudal law, though it narrowed the ſyſtem of liberty, was founded in it; that the ſpirit of freedom is as vital in this form, and the principles it goes upon as ſolid, as in the beſt-formed republic; and that *villanage* concludes no more againſt the *feudal*, than *ſlavery* againſt the *Greek* or *Roman*, conſtitutions.

MR. SOMERS.

THAT is, Sir JOHN, you make *liberty* to have been the eſſence of all THREE; though,

though, to the perfection of an equal commonwealth, you ſuppoſe it ſhould have been further ſpread out and dilated: as they ſay of *frankincenſe* (if you can forgive another alluſion), which, when lying in the lump, is of no great uſe or pleaſure; but, when properly diffuſed, is the ſweeteſt of all odours. But you was going on with the application of your principles.

SIR J. MAYNARD.

I WAS going to ſay that, as many have been miſled by wrong notions of the *feudal tenures*, others had erred as widely in their reaſonings on *the late origin of the lower houſe of parliament*. How have we heard ſome men triumph, in dating it no higher than the reign of EDWARD III? Let the fact be admitted. What follows? That this houſe is an uſurpation on the prerogative? Nothing leſs. It was gradually brought forth by time, and grew up under the favour and

good liking of our princes [x]. The conſtitution itſelf ſuppoſed the men of greateſt conſequence in the commonwealth to have a ſeat in the national councils. Trade and agriculture had advanced vaſt numbers into conſequence, that before were of ſmall account in the kingdom. The public conſideration was increaſed by their wealth, and the public neceſſities relieved by it. Were theſe to remain for ever excluded from the king's councils? or was not that council, which had liberty for its object, to widen and expand itſelf in order to receive them? It did, in fact, receive them with open arms; and, in ſo doing, conducted itſelf on the very principles of the old feudal policy.

[x] Agreeably to what Sir H. SPELMAN aſſerts, in his Gloſſary, of its parent, the *feudal law* itſelf; "DE LEGE FEUDALI—pronunciandum cenſeo, TEMPORIS eam eſſe filiam, ſenſimque ſuccreſcentem, EDICTIS PRINCIPUM auctam indies et excultam." In voce FEODUM.

IN

In ſhort, the *feudal conſtitution*, different from all others that human policy is acquainted with, was of ſuch a make, that it readily gave way, and fitted itſelf to the varying ſituations of ſociety: narrow and contracted, when the public intereſt required a cloſe connexion between the governor and the governed; large and capacious, when the ſame intereſt required that connexion to be looſened. Juſt as the ſkin (if you will needs have a compariſon), the natural cincture of the body, confines the young limbs with ſufficient tightneſs, and yet widens in proportion to their growth, ſo as to let the different parts of the body play with eaſe, and obtain their full ſize and dimenſions. Whereas the other policies, that have obtained in the world, may be compared to thoſe artificial coverings, which, being calculated only for one age and ſize, grow troubleſome and inſupportable in any other; and yet cannot, like theſe,

be thrown off and ſupplied by ſuch as are more ſuitable and convenient; but are worn for life, though with conſtant, or rather increaſing, uneaſineſs.

THIS then being the peculiar prerogative of the feudal policy, I think we may ſay with great truth, not that the houſe of commons violated the conſtitution, but, on the contrary, that the conſtitution itſelf demanded, or rather generated, the houſe of commons.

So that I cannot by any means commend the zeal which ſome have ſhewn in ſeeking the origin of this houſe in the *Britiſh* or even *Saxon* annals. Their aim was, to ſerve the cauſe of liberty; but, it muſt be owned, at the expence of truth, and, as we now perceive, without the leaſt neceſſity.

BP. BURNET.

IT hath happened then in this, as in ſo many other inſtances, that an excellent cauſe

cauſe hath ſuffered by the ill judgment of its defenders. But, when truth itſelf had been diſgraced by one ſort of men in being employed by them to the worſt purpoſes, is it to be wondered that others ſhould not acknowledge her in ſuch hands, but be willing to look out for her in better company?

SIR J. MAYNARD.

LET us ſay, my lord, they ſhould have acknowledged her in whatever company ſhe was found; and the father, as ill-applied truths are ſeen to be full as ſerviceable to a bad cauſe, as downright falſehoods. Beſides, this conduct had not only been fairer, but more politic. For when ſo manifeſt a truth was rejected, it was but natural to ſuſpect foul play in the reſt, and that none but a bad cauſe could want to be ſupported by ſo diſingenuous a management.

MR.

MR. SOMERS.

I THINK ſo, Sir JOHN; and there is this further uſe of ſuch candor, that it cuts off at once the neceſſity of long and laboured reſearches into the dark parts of our hiſtory; and ſo not only ſhortens the debate, but renders it much more intelligible to the people.

SIR J. MAYNARD.

I WAS aware of that advantage, and am therefore not diſpleaſed that truth allowed me to make uſe of it.—But to reſume the main argument; for I have not yet done with my evidence for the freedom of our excellent conſtitution:—It ſeemed of moment to ſhew, from the nature and conſequences of the *Norman* ſettlement, that the *Engliſh* government was eſſentially free. But, becauſe the freeſt form of government may be tamely given up and ſurrendered into the hands of a maſter, I hold it of conſequence

quence to prove, that the *Engliſh* ſpirit hath always been anſwerable to the conſtitution, and that even the moſt inſidious attempts on their liberties have never failed to awaken the reſentment of our generous forefathers. In a word, I would ſhew that the jealouſy, with which the *Engliſh* have ever guarded the national freedom, is at once a convincing teſtimony of their *right*, and of their conſtant *poſſeſſion* of it.

And though I might illuſtrate this argument by many other inſtances, I chuſe to inſiſt only on ONE, THEIR PERPETUAL OPPOSITION TO THE CIVIL AND CANON LAWS; which, at various times and for their ſeveral ends, the crown and church have been ſolicitous to obtrude on the people.

To open the way to this illuſtration, let it be obſerved that, from the time of Honorius, that is, when the *Roman* authority

thority ceaſed amongſt us, the *Saxon* inſtitutions, incorporated with the old *Britiſh* cuſtoms, were the only ſtanding laws of the kingdom. Theſe had been collected and formed into a ſort of digeſt by EDWARD the Confeſſor; and ſo great was the nation's attachment to them, that WILLIAM himſelf was obliged to ratify them, at the ſame time that the feudal law itſelf was enacted. And afterwards, on any attempt to innovate on thoſe laws, we hear of a general outcry and diſſatisfaction among the people; which jealouſy of theirs was not without good grounds; as we may ſee from an affair that happened in the Conqueror's own reign, and ſerves to illuſtrate the policy of this monarch.

IT had been an old cuſtom, continued through the *Saxon* times, for the biſhops and ſheriffs to ſit together in judicature in the county courts. This had been found a very convenient practice; for

the preſence of the churchmen gave a ſanction to the determinations of the temporal courts, and drew an extraordinary reverence towards them from the people. Yet we find it aboliſhed by the Conqueror; who, in a reſcript to the biſhop of *Lincoln*, ordained that, for the future, the biſhops and aldermen of the ſhires ſhould have ſeparate courts and ſeparate juriſdictions. The pretence for this alteration was, the diſtinct nature of the two judicatures, and the deſire of maintaining a ſtrict conformity to the canons of the church. The real deſign was much deeper. There is no queſtion but WILLIAM's inclinations, at leaſt, were for abitrary government; in which project his *Norman* lawyers, it was hoped, might be of good uſe to him. But there was a great obſtacle in his way. The churchmen of thoſe times had incomparably the beſt knowledge of the *Saxon* laws. It matters not, whether thoſe churchmen were *Normans*, or not. They were equally

equally devoted, as I obſerved before, to the *Saxon* laws, with the *Engliſh*; as favouring that independency, they affected, on the civil power. Beſides, in the Confeſſor's time, many and perhaps the greateſt of the churchmen had been *Normans*; ſo that the ſtudy of the *Saxon* laws, from the intereſt they promiſed themſelves in them, was grown familiar to the riſing eccleſiaſtics of that country. Hence, as I ſaid, the churchmen, though *Normans*, were well inſtructed in the ſpirit and genius of the *Saxon* laws; and it was not eaſy for the king's gloſſers to interpret them to their own mind, whilſt the biſhops were at hand to refute and rectify their comments.

Besides, the truth is (and my lord of Salisbury will not be diſpleaſed with me for telling it), the eccleſiaſtics of that time were much indevoted to the court. They conſidered the king as the wickedeſt of all tyrants. He had brought them into

into ſubjection by their baronies, and had even ſet the pope himſelf at defiance. In this ſtate of things, there was no hope of engaging the clergy in his plot. But when a ſeparation of the two tribunals was made, and the civil courts were ſolely adminiſtered by his own creatures, the laws, it was thought, would ſpeak what language he pleaſed to require of them.

Such appears to have been the deſign of this prince in his famous diſtinction of the eccleſiaſtic and temporal courts. It was ſo artfully laid, and ſo well coloured, that the laity ſeem to have taken no umbrage at it. But the clergy ſaw his drift; and their zeal for the antient laws, as well as their reſentments, put them upon contriving methods to counteract it. They hit upon a very natural and effectual one. In a word, they all turned common lawyers; and ſo found means of introducing themſelves into the civil courts.

courts. This expedient ſucceeded ſo well, and was ſo generally reliſhed, that the clergy to a man almoſt in the next reign were become profeſſors of the common law; NULLUS CLERICUS NISI CAUSIDICUS, as WILLIAM of *Malmeſbury* takes care to inform us [*y*].

BP. BURNET.

WHATEVER their motive might be, the churchmen, I perceive, interpoſed very ſeaſonably in the ſupport of our civil liberties. It was a generous kind of revenge, methinks, to repay the king's tyranny over the church by vindicating the authority of the *Engliſh* laws.

SIR J. MAYNARD.

IT was ſo; and for this good ſervice, I let them paſs without any harſher reflection. Though the true ſecret is, perhaps, no more than this: Their main

[*y*] DISS. AD FLET. 1091. and WILLIAM OF MALMESBURY, lib. iv. 1. 69. *Lond.* 1596.

object

object was the church, of whoſe intereſts, as is fitting, we will allow them to be the moſt competent judges. And, as theſe inclined them, they have been, at different junctures, the defenders or oppreſſors of civil liberty.

BP. BURNET.

AT *ſome* junctures, it may be, they have. But, if you inſiſt on ſo general a cenſure, I muſt intreat Mr. SOMERS, once more, to take upon him the defence of our order.

SIR J. MAYNARD.

ALL I intended by this inſtance, was, to ſhew the ſpirit of the *Saxon* laws, which could excite the jealouſy of the prince, and deſerve, at ſuch a ſeaſon, the patronage of the clergy. It ſeems, however, for once, as if they had a little miſconceived their true intereſts. For the diſtinction of the two judicatures, which occaſioned their reſentment, was

in the end, a great means of the hierarchical greatneſs and independency.

MATTERS continued on this footing during the three firſt of the *Norman* reigns. The prince did his utmoſt to elude the authority of the *Engliſh* laws; and the nation, on the other hand, laboured hard to confirm it. But a new ſcene was opened under King STEPHEN, by means of the *Juſtinian* laws; which had lately been recovered in *Italy*, and became at once the faſhionable ſtudy over all *Europe*. It is certain, that the Pandects were firſt brought amongſt us in that reign; and that the reading of them was much favoured by Archbiſhop THEOBALD [z], under whoſe encouragement they were publicly read in *England* by VACARIUS, within a ſhort time after the famous IRNERIUS had opened his ſchool at *Bologna*. There is ſomething ſingular in the readineſs with

[z] SELDEN's Works, vol. ii. p. 1082.

which this new ſyſtem of law was embraced in theſe weſtern parts of *Europe*. But my friend Mr. SELDEN uſed to give a plauſible account of it. It was, he ſaid [*a*], in oppoſition to INNOCENT II, who was for obtruding on the Chriſtian ſtates the *decretals*, as laws; manifeſtly calculated for the deſtruction of the civil magiſtrate's power. And what ſeems to authorize the opinion of my learned friend, is, that the popes very early took the alarm, and, by their decrees, forbad churchmen to teach the civil law: as appears from the conſtitution of ALEXANDER III, ſo early as the year 1163, in the council of TOURS; and afterwards from the famous decretal of SUPER-SPECULA by HONORIUS III, in 1219, in which the clergy of all denominations, ſeculars as well as regulars, were prohibited the ſtudy of it. And it was, doubtleſs, to defeat the miſchief which the popes apprehended to them-

[*a*] DISS. AD FLET. 1078.

ſelves, from the credit of the imperial laws, that GRATIAN was encouraged, about the ſame time, to compoſe and publiſh his DECREE; which, it is even ſaid [*b*], had the expreſs approbation of Pope EUGENIUS.

LET us ſee, now, what reception this newly-recovered law, ſo ſeverely dealt with by the pope, and ſo well entertained by the greateſt part of *Europe*, had in *England*.

VACARIUS had continued to teach it for ſome time, in the archbiſhop's palace at *Lambeth*, to great numbers, whom firſt, the novelty of the ſtudy, and then, the faſhion of the age, had drawn about him. The fame of the teacher was high, and the new ſcience had made a great progreſs, when on a ſudden it received a ſevere check, and from a quarter

[*b*] DR. DUCK, *De uſu et authoritate juris civilis*, p. 103. *Lugd. Batav.* 1654.

whence

whence one ſhould not naturally expect it. In ſhort, the king himſelf interdicted the ſtudy of it. Some have imagined, that this inhibition was owing to the ſpite he bore to archbiſhop THEOBALD. But the truer reaſon ſeems to be, that the canon law was firſt read by VACARIUS at the ſame time, and under colour of the imperial. I think we may collect thus much very clearly from JOHN OF SALISBURY, who acquaints us with this edict. For he conſiders it as an offence againſt the church, and expreſsly calls the prohibition, an IMPIETY [c].

IT is true, the decretals of GRATIAN were not yet publiſhed. But Ivo had made a collection of them in the reign of HENRY I; and we may be ſure that ſome code of this ſort would privately go about amongſt the clergy, from what was before obſerved of the pains taken

[c] POLICRATIC. lib. viii. c. 22. p. 672. *Lugd. Bat.* 1639.

by INNOCENT II, to propagate the decretals. We may further obſerve, that THEOBALD had been in high favour with INNOCENT; and that his ſchool, at *Lambeth*, was opened immediately on his return from *Rome*, whither he had been to receive his pall from this pope, on his appointment to the ſee of *Canterbury* [*d*]. All which makes it probable, that STEPHEN's diſpleaſure was not ſo much at the civil, as *canon* law, which he might well conclude had no friendly aſpect on his ſovereignty.

AND we have the greater reaſon to believe that this was the fact, from obſerving what afterwards happened in the reign of HENRY III, when a prohibition of the ſame nature was again iſſued out againſt the teachers of the *Roman* laws in *London* [*e*]. The true cauſe of the royal mandate is well known. GREGORY IX

[*d*] DISS. AD FLET. 1082. [*e*] Ibid. 1097.

had

had juſt then publiſhed a new code of the decretals; which, like all former collections of this ſort, was calculated to ſerve the papal intereſt, and depreſs the rights of princes.

HOWEVER, theſe edicts, if we ſuppoſe them levelled againſt the civil law, had no effect, any more than thoſe of the popes ALEXANDER and HONORIUS, before mentioned. For the imperial law, being generally well received by the princes of *Europe*, preſently became a kind of *Jus gentium*. And the clergy, who aſpired to power and dignities, either abroad or at home, ſtudied it with an inconceivable rage; inſomuch, that ROGER BACON tells us, that, in his time for forty years together, the ſeculars, who were the eccleſiaſtics employed in buſineſs, never publiſhed a ſingle treatiſe in divinity [*f*].

[*f*] Dr. DUCK, p. 364.

THE truth is, whatever ſhew the popes or our own princes might make, at times, of diſcountenancing the civil law, it was not the deſign of either abſolutely and univerſally to ſuppreſs it. It was properly, not the civil, but the canon law, which was diſcountenanced by our kings. And the caſe of the popes was, that, when they found the imperial law oppoſed to the *common*, they were ready to favour it; when it was oppoſed to the *canon*, and brought that into neglect, they forbad eccleſiaſtics the ſtudy of it.

MR. SOMERS.

IN the mean time the poor people, methinks, were in a fine condition, between two laws, the one founded on civil, and the other on eccleſiaſtical, tyranny. If either had prevailed, there had been an end of their liberties.

SIR

SIR J. MAYNARD.

CERTAINLY their ſituation was very critical. Yet in the end it was preciſely this ſituation that ſaved them. For betwixt theſe contentions of the crown and mitre, each endeavouring to extend its dominion over the other, the people, who were of courſe to be gained by either ſide in its diſtreſs, found means to preſerve themſelves from both.

To ſee how this happened, we muſt remember, what appears indeed from the two edicts of STEPHEN and HENRY, that the king himſelf was a bulwark betwixt them and the papal power. And when the king in his turn wanted to exalt his prerogative over all, the church very naturally took the alarm, as we ſaw in the caſe of WILLIAM's ſeparation of the two tribunals. And thus it happened, as NAT. BACON obſerves [g], "That

[g] DISC. Part I. p. 78. *Lond.* 1739.

many

many times the pope and the clergy became protectors of the people's liberties, and kept them ſafe from the rage of kings. The greateſt danger was, when the two powers chanced to unite in one common deſign againſt them; as they did in their general inclination for the eſtabliſhment of the civil law. But here the people had the courage always to defend themſelves; and with that wiſdom too, as demonſtrates their attention to the cauſe of civil liberty, and the vigilance with which they guarded even its remoteſt outworks.

Of their ſteady and watchful conduct, in this reſpect, I ſhall mention ſome of the many memorable examples, that occur in our hiſtory.

I HAVE ſaid that from the time of STEPHEN, notwithſtanding his famous edict, the imperial laws were the chief and favourite ſtudy of the clergy. They had

had good reaſon for applying themſelves ſo cloſely to this ſcience, and ſtill further views than their own immediate advancement. They wanted to bring thoſe laws into the civil courts, and to make them the ſtanding rule of public adminiſtration; not merely from their good-will to the papal authority, which would naturally gain an advantage by this change, but for the ſake of controlling the too princely barons, and in hopes, no doubt, that the impetial would in due time draw the canon laws into vogue along with them. Such, I think, were at leaſt the ſecret deſigns of the ruling clergy; and they did not wait long before they endeavoured to put their project in execution. The plot was admirably laid, and with that deep policy as hath kept it, I believe, from being generally underſtood to this day.

The great men of that time were, we may be ſure, too like the great men of every

every other, to be very ſcrupulous about the commiſſion of thoſe vices to which they were moſt inclined. The truth is, their profligacy was in proportion to their greatneſs and their ignorance. They indulged themſelves in the moſt licentious amours, and even prided themſelves in this licence. The good churchmen, no doubt, lamented this corruption of manners; but, as they could not reform, they reſolved at leaſt to draw ſome emolument to themſelves from it. The caſtles of the barons, they ſaw, were full of baſtards. Nay, the courteſy of that time had ſo far dignified their vices, that the very name was had in honour. EGO GULIELMUS BASTARDUS, is even the preamble to one of WILLIAM the firſt's charters.

YET, as reſpectable as it was become, there was one unlucky check on this favourite indulgence: and this, with the barons leave, the conſiderate biſhops would

would preſently take off. Subſequent marriage, by the imperial as well as canon laws, legitimated baſtards, as to ſucceſſion; whereas the common law kept them eternally in their ſtate of baſtardy. It is not to be doubted, but the barons would be ſenſible enough of this reſtraint. They earneſtly wiſhed to get rid of it. And could any thing bid ſo fair to recommend the imperial law to their good liking, as the tender of it for ſo deſirable a purpoſe? At a parliament, therefore, under HENRY III [*b*], *Rogaverunt omnes epiſcopi, ut conſentirent quod nati ante matrimonium eſſent legitimi.* What think ye now of this general ſupplication of the hierarchy? What could the barons do but comply with it, eſpecially as it was ſo kindly intended for their relief, and the propoſal was even made with a delicacy that might enable them to come into it with a good grace, and without the ſhame of ſeeming to

[*b*] At MERTON, in the year 1236.

deſire

deſire it? All this is very true. Yet the anſwer of the virtuous barons is as follows: *Omnes comites et barones unâ voce reſpondérunt*, QUOD NOLUMUS LEGES ANGLIÆ MUTARI.

WE ſee then what ſtuck with them. Theſe barons, as licentious as they were, preferred their liberty to their pleaſure. The biſhops, they knew, as partiſans of the pope, were for ſubjecting the nation to the imperial and papal laws. They offered, indeed, to begin with a circumſtance very much to their taſte. But if they accepted the benefit of them in one inſtance, with what decency could they object to them in others? They determined therefore to be conſiſtent. They rejected a propoſition, moſt agreeable in itſelf, leſt their acceptance of it ſhould make way for the introduction of foreign laws; whoſe very genius and eſſence, they well knew, was arbitrary, deſpotic power. Their anſwer ſpeaks their ſenſe

of

of this matter, NOLUMUS LEGES ANGLIÆ MUTARI. They had nothing to object to the propoſal itſelf. But they were afraid for the conſtitution.

MR. SOMERS.

I DOUBT, Sir JOHN, my lord of SALISBURY will bring a freſh complaint againſt you, for this liberty with the biſhops. But I, who ſhall not be thought wanting in a due honour for that bench, muſt needs confeſs myſelf much pleaſed, as well with the novelty, as juſtice of this comment. I have frequently conſidered this famous reply of the old barons. But I did not ſee to the bottom of the contrivance. Their averſion to the imperial laws, as you ſay, muſt have been very great, to have put them on their guard againſt ſo inviting a propoſal.

BP. BURNET.

ONE thing, however, is forgotten or diſſembled in this account, that the law of JUSTINIAN,

JUSTINIAN, which allows the privilege of legitimation to ſubſequent marriage, is grounded on ſome reaſons that might, perhaps, recommend it to the judgment, as well as intereſt of the old prelates. Beſides, they doubtleſs found themſelves much diſtreſſed by the contrariety of the two laws in this inſtance. For the ground of their motion, as I remember, was, *Quod eſſet ſecundum communem formam eccleſiæ.* But, to deal ingenuouſly with you, Sir JOHN, you have dreſſed up your hypotheſis very plauſibly. And I, who am no advocate for the civil or eccleſiaſtical laws, in this or any inſtance where they claſh with thoſe of my country, can allow your raillery on HENRY's good biſhops, if it were only that I ſee it makes ſo much for your general argument.

SIR J. MAYNARD.

YOUR lordſhip may the rather excuſe this liberty with the *church*, as I propoſe,

poſe, in due time, to deal as freely with WESTMINSTER-HALL; a ſimilar plot, which I ſhall have occaſion to mention preſently, having been formed againſt the antient conſtitution by the men of our profeſſion.

MR. SOMERS.

IN the mean time, Sir JOHN, you muſt give me leave, in quality of advocate for the church, to obſerve one thing, that does the churchmen honour. It is, that, in theſe attempts on the conſtitution, the judges and great officers of the realm, who in thoſe times were of the clergy, conſtantly took the ſide of the *Engliſh* laws; as my Lord COKE himſelf, I remember, takes notice in his commentary on this ſtatute of MERTON.

SIR J. MAYMARD.

I BELIEVE the obſervation is very juſt. But I ſhould incline to impute this integrity, not to the influence of church

 principles,

principics, but thoſe of the common law, and ſo turn your compliment to the honour of our profeſſion inſtead of theirs, if it were not too clear in fact that every profeſſion, in its turn, hath been liable to this charge of corruption.

But I was going on with my proofs of the national averſion to the imperial law.

The next ſhall be taken from that famous diſpute concerning the ſucceſſion to the crown of *Scotland* in the reign of Edward I. For a queſtion arifing about the kind of law by which the controverſy ſhould be decided, and it being eſpecially debated, whether the *Cæſarean* law, as a ſort of *jus gentium*, ought not in ſuch a cauſe to have the preference to the law of *England*; it was then unanimouſly determined by the great council of Norham, that the authority of the *Cæſarean* law ſhould by no means be

be admitted; NE INDE MAJESTATIS ANGLICANÆ JURI FIERET DETRIMENTUM [i].

THIS determination was public, and given on a very ſolemn occaſion. And in general we may obſerve, that at the junctures when the ſtate hath been moſt jealous of its liberty and honour, it hath declared the loudeſt againſt the *imperial laws*: as in the WONDER-WORKING parliament under RICHARD II, when the duke of *Glouceſter* accuſed the archbiſhop of *York*, the duke of *Ireland*, and other creatures of the king, of high treaſon. The charge was ſo fully proved, that the court had no other way of diverting the ſtorm, than by pretending an irregularity in the forms of procedure. To this end the lawyers were conſulted with, or more properly directed. I will diſguiſe nothing. They deſcended ſo much from the dignity of

[i] DISS. AD FLET. 1108.

their profeſſion, as to act in perfect ſubſerviency to the views of the court; and therefore gave it as their opinion, that the proceedings againſt the lords were of no validity, as being contrary to the forms preſcribed by the *civil law*. The barons took themſelves to be inſulted by theſe ſhifts of the lawyers. They inſiſted that the proceedings were agreeable to their own cuſtoms, and declared roundly that they would never ſuffer *England* to be governed by the *Roman* civil law [*k*].

WHAT think ye now of theſe examples? Are they not a proof that the ſpirit of liberty ran high in thoſe times, when neither the intrigues of churchmen nor the chicane of lawyers could put a ſtop to it? It ſeems as if no direct attempts on the conſtitution could have

[*k*] See FORTESCUE, *De laudibus leg. Angl.* p. 74. *Lond.* 1741; and SELDEN's JANUS ANGLORUM, 1610, vol. ii. tom. ii.

been

been made with the leaſt appearance of ſucceſs; and that therefore the abettors of arbitrary power were obliged to work their way obliquely, by contriving methods for the introduction of a foreign law.

In this project they had many advantages, which nothing but an unwearied zeal in the cauſe of liberty could have poſſibly counteracted. From the reign of Stephen to that of Edward III, that is, for the ſpace of near 200 years, the *Roman* law had been in great credit [*l*]. All the learning of the times was in the clergy, and that learning was little more than the imperial and canon laws. The fact is ſo certain, that ſome of the clergy themſelves, when in an ill temper, or off their guard, complain of it in the ſtrongeſt terms. And to ſee the height to which this humour was carried, not the ſeculars only who intend-

[*l*] Diss. ad Flet. 1104.

ed to riſe by them, but the very monks in their cells ſtudied nothing but theſe laws [*m*]. To complete the danger, the magiſtracies and great offices of the kingdom were filled with churchmen [*n*].

WHO would expect, now, with thoſe advantages, but that the *Roman* law would have forced its way into our civil courts? It did indeed inſinuate itſelf there as it were by ſtealth, but could never appear with any face of authority. The only ſervice, that would be accepted from it, was that of illuſtration only in the courſe of their pleadings, whilſt the lawyers quoted occaſionally from the INSTITUTES, juſt as they might have done from any other ancient author [*o*]. Yet, ſo long as the churchmen preſided in the courts of juſtice, this intruder was to be reſpected; and it is pleaſant to obſerve the wire-drawing of ſome of our

[*m*] Dr. DUCK, p. 365.
[*n*] DISS. AD FLET. 1010.
[*o*] Ibid. 1106.

ableſt

ableſt lawyers, in their endeavours to make the policy of *England* ſpeak the language of *Rome*.

MR. SELDEN's diſſertation on FLETA [*p*], which lies open before me, affords a curious inſtance. The civil law ſays, "Populus ei [Cæſari] et in eum omne ſuum imperium et poteſtatem conferat;" meaning by *people*, the *Roman* people, and ſo eſtabliſhing the deſpotic rule of the prince. But BRACTON took advantage of the ambiguity, to eſtabliſh that maxim of a free government, "That all dominion ariſes from the people." This, you will ſay, was good management. But what follows is ſtill better. "Nihil aliud, ſays he, poteſt rex in terris, cum ſit Dei miniſter et vicarius, niſi quod JURE poteſt. NEC OBSTAT quod dicitur, QUOD PRINCIPI PLACET LEGIS HABET VIGOREM; quia ſequitur in fine legis, CUM LEGE REGIA QUÆ DE

[*p*] P. 1046.

IMPERIO EJUS LATA EST; id eſt, non quicquid de voluntate regis temerè præſumptum eſt, ſed quod conſilio magiſtratuum ſuorum, rege auctoritatem præſtante, et habitâ ſuper hoc deliberatione et tractatu, rectè fuerit definitum." Thus far old BRACTON; who is religiouſly followed in the ſame gloſs by THORNTON, and the author of FLETA. But what! you will ſay, this is an exact deſcription of the preſent conſtitution. It is ſo, and therefore certainly not to be found in the civil law. To confeſs the truth, theſe venerable ſages are playing tricks with us. The whole is a premeditated falſification, or, to ſay it ſofter, a licentious commentary, for the ſake of *Engliſh* liberty. The words in the PANDECTS and INSTITUTIONS are theſe; "QUOD PRINCIPI PLACUIT, LEGIS HABET VIGOREM, UTPOTE CUM LEGE REGIA, QUÆ DE IMPERIO EJUS LATA EST, POPULUS EI ET IN EUM OMNE SUUM IMPERIUM ET POTESTATEM CONFERAT."

My honeſt friend, in mentioning this extraordinary circumſtance, ſays, one cannot conſider it, *ſine ſtupore*. He obſerves, that theſe lawyers did not quote the Pandects by hear-ſay, but had copies of them; and therefore adds (for I will read on) "Unde magis mirandum quânam ratione evenerit, ut non ſolùm ipſe, adeò judiciis forenſibus clarus, et (ſi Biographis ſcriptorum noſtratium fides) profeſſor juris utriuſque Oxonienſis, verùm etiam THORNTONIUS juris aliàs peritiſſimus, et FLETÆ author, adeò diverſam lectionem, ſenſumque diverſum atque interpretibus aliis univerſis adeò alienum in illuſtriſſimo juris Cæſarei loco explicando tam fidenter admiſerint." The difficulty, you ſee, increaſes upon him. But we ſhall eaſily remove it by obſerving, that the Cæſarean laws, though they had no proper authority with us, yet were much complimented in thoſe times, and were to be treated on all occaſions with ceremony.

And

And therefore thoſe lawyers that lived under and wanted to ſupport a free conſtitution, ſaw there was no way of ſerving their cauſe ſo effectually, as by pretending to find it in the *Roman inſtitutes*.

MR. SOMERS.

THIS management of BRACTON and his followers makes ſome amends for the ill conduct of RICHARD the ſecond's lawyers. And as to their chicanery, the ingenuity of the gloſs, we will ſuppoſe, was no more than neceſſary to correct the malignity of the text.

SIR J. MAYNARD.

THEY had, no doubt, conſulted their honour much more, by infiſting roundly, as they might have done, that the text had no concern at all in the diſpute. But I mention theſe things only to ſhew the extreme reverence, that was then paid to the civil law, by the ſhifts the common lawyers were put to in order to

evade its influence. From which we learn how rooted the love of liberty muſt have been in this nation, and how unſhaken the firmneſs of the national councils in ſupporting it, when, notwithſtanding the general repute it was of in thoſe days, the imperial law could never gain authority enough to preſcribe to us in any matters that concerned the rights of the crown, or the property of the ſubject. And this circumſtance will be thought the more extraordinary, if it be conſidered, that, to the general eſteem in which the *Roman* law was held by the clergy, our kings have uſually added the whole weight of their influence; except indeed at ſome particular junctures, when their jealouſy of the *canon* law prevailed over their natural bias to the *civil*.

MR. SOMERS.

I SHOULD be unwilling to weaken any argument you take to be of uſe in maintaining the noble cauſe you have undertaken.

taken. But, methinks, this charge on our princes would require to be made out by other evidence [*q*] than hath been commonly produced for it. There is no doubt but many of them have aimed at ſetting themſelves above the laws of their country; but is it true (I mean, though FORTESCUE himſelf [*r*] has ſuggeſted the ſame thing) that for this purpoſe they have uſually expreſſed a partiality to the *Roman* laws?

SIR J. MAYNARD.

I BELIEVE it certain that they have, and on better reaſons than the bare word of any lawyer whatſoever.

WHAT think you of RICHARD the ſecond's policy in the inſtance before mentioned; that RICHARD, who uſed to declare, "That the laws were only in his mouth and breaſt, and that he himſelf

[*q*] Mr. SELDEN's DISS. AD FLET. 1100.
[*r*] *De laud. leg. Ang.* c. 33, 34.

could

could make and unmake them at his pleaſure?" We may know for what reaſon a prince of this deſpotic turn had recourſe to the *Roman* law.

BUT even his great predeceſſor is known to have been very indulgent towards it. And ſtill earlier, EDWARD I. took much pains to eſtabliſh the credit of this law; and to that end engaged the younger ACCURSIUS, the moſt renowned doctor of the age, to come over into *England*, and ſet up a ſchool of it at *Oxford*. Or, to wave theſe inſtances, let me refer you to a certain and very remarkable fact, which ſpeaks the ſenſe, not of this or that king, but of the whole ſucceſſion of our princes.

THE imperial law, to this day, obtains altogether in the courts of admiralty, in courts mareſcall, and in the univerſities [s]. On the contrary, in what we

[s] DISS. AD FLET. 1102.

call

call the courts of law and equity, it never hath, nor ever could prevail. What ſhall we ſay to this remarkable difference? or to what cauſe will you aſcribe it, that this law, which was conſtantly excluded with ſuch care from the one ſort of courts, ſhould have free currency and be of ſole authority in the other? I believe it will be difficult to aſſign any other than this: that the ſubjects of deciſion in the firſt ſpecies of courts are matters in the reſort of the king's prerogative, ſuch as peace and war, and the diſtribution of honours; whilſt the ſubjects of deciſion in the courts of common law are out of his prerogative, ſuch as thoſe of liberty and property. The king had his choice by what law the firſt ſort of ſubjects ſhould be regulated; and therefore he adopted the imperial law. He had not his choice in the latter inſtance; and the people were never ſatisfied with any other than the law of the land.

MR.

MR. SOMERS.

YET Mr. SELDEN, you know, gives another reaſon of this preference: it was, he thinks, becauſe foreigners are often concerned with the natives in thoſe tribunals where the civil law is in uſe.

SIR J. MAYNARD.

TRUE; but my learned friend, as I conceive, did not attend to this matter with his uſual exactneſs. For foreigners are as frequently concerned in the courts of law and equity, as in the other tribunals. The caſe in point of reaſon is very clear. In all conteſts that are carried on between a native and a foreigner, as the ſubject of another ſtate, the deciſion ought to be by the law of nations. But when a foreigner puts himſelf with a native under the protection of our ſtate, the determination is, of courſe, by our law. The practice hath uniformly correſponded to the right in the courts of law

law and equity. In the other tribunals the right hath given way to the will of the prince, who had his reaſons for preferring the authority of the imperial law.

Upon the whole, if we conſider the veneration, which the clergy uſually entertained, and endeavoured to inculcate into the people, for the civil law; the indulgence ſhewn it by the prince; its prevalence in thoſe courts which were immediately under the prerogative; and even the countenance ſhewn it at times in the couſe of pleading at common law; we cannot avoid coming to this ſhort concluſion, "That the genius of the imperial laws was repugnant to our conſtitution; and that nothing but the extreme jealouſy of the barons, leſt they might prove, in pleas of the crown, injurious to civil liberty, hath kept them from being received in *England* on the ſame footing that we every where find they

they are in the other countries of *Europe*, and as they are in *Scotland* to this day.

But, if you think I draw this concluſion too haſtily, and without grounding it on ſufficient premiſes, you may further conſider with me, if you pleaſe, THE FATE AND FORTUNES OF THE CIVIL LAW IN THIS KINGDOM DOWN TO THE PRESENT TIME.

In the reigns of Henry VII [*t*] and VIII, and the two firſt kings of the houſe of

[*t*] The ſpeaker might have begun this account of the *fate and fortunes* of the civil law ſtill higher. Nat. Bacon, ſpeaking of Henry the fifth's reign, obſerves, "The times were now come about, wherein light began to ſpring forth, conſcience to beſtir itſelf, and men to ſtudy the ſcriptures. This was imputed to the idleneſs and careleſſneſs of the clergy, who ſuffered the minds of young ſcholars to luxuriate into errors of divinity, for want of putting them on to other learning; and gave no encouragement to ſtudies of human literature, by preferring thoſe that were deſerving. The convocation taking this into conſideration, do decree, that no perſon ſhould exerciſe any juriſdiction in any office, as

of STUART, that is, the moſt deſpotic of our princes, the ſtudy of the civil law hath been more eſpecially favoured; as we might conclude from the general ſpirit of thoſe kings themſelves, but as we certainly know from the countenance they ſhewed to its profeſſors; from their chuſing to employ them in their buſineſs, and from the ſalaries and places they

vicar-general, *commiſſary*, or *official*, or otherwiſe, unleſs he ſhall firſt in the univerſity have taken degrees in the CIVIL OR CANON LAWS. A ſhrewd trick this was, to ſtop the growth of the ſtudy of divinity, and WICKLIFF's way; and to embelliſh men's minds with a kind of learning that may gain them preferment, or at leaſt an opinion of abilities beyond the common ſtrain, and dangerous to be meddled with. Like ſome gallants, that wear ſwords as badges of honour, and to bid men beware, becauſe they poſſibly may ſtrike, though in their own perſons they may be very cowards. And no leſs miſchievouſly intended was this againſt the rugged COMMON LAW, a rule ſo nigh allied to the goſpel-way, as it favoureth liberty; and ſo far eſtranged from the way of the civil and canon law, as there is no hope of accommodation till Chriſt and Antichriſt have fought the field." DISC. Part II. p. 90. *Lond.* 1739.

provided for their encouragement. Yet ſee the iſſue of all this indulgence to a foreign law, and the treatment it met with from our parliaments and people! The oppreſſions of EMPSON and DUDLEY had been founded in a ſtretch of power, uſurped and juſtified on the principles of the civil law; by which theſe miſcreants had been enabled to violate a fundamental part of our conſtitution, the way of *trial by* JURIES. The effect on the people was dreadful. Accordingly, in the entrance of the next reign, though the authority, by which they had acted, had even been parliamentary, theſe creatures of tyranny were indicted of high treaſon, were condemned and executed for having been inſtrumental in ſubverting LEGEM TERRÆ; and the extorted ſtatute, under which they had hoped to ſhelter themſelves, was with a juſt indignation repealed.

YET all this was conſidered only as a neceſſary ſacrifice to the clamours of an incenſed people. The younger HENRY, we may be ſure, had ſo much of his father in him, or rather ſo far outdid him in the worſt parts of his tyranny, that he could not but look with an eye of favour on the very law he had been conſtrained to aboliſh. His great eccleſiaſtical miniſter was, no doubt, in the ſecret of his maſter's inclinations, and conducted himſelf accordingly. Yet the vengeance of the nation purſued and overtook him in good time. They reſented his diſloyal contempt of the original conſtitution; and made it one of the articles againſt this *Roman* cardinal, "That he endeavoured to ſubvert *antiquiſſimas leges hujus regni, univerſumque hoc regnum* LEGIBUS IMPERIALIBUS *ſubjicere.*"

FROM

FROM this time, the ſtudy of the civil law was thought to languiſh in *England*, till it revived with much ſpirit in the reigns of thoſe unhappy princes who ſucceeded to the houſe of TUDOR. Then indeed, by inclination and by pedantry, JAMES I. was led to patronize and encourage it. And the ſame project was reſumed, and carried ſtill further, by his unfortunate ſon. I ſpeak now from my own experience and obſervation. The civil lawyers were moſt welcome at court. They were brought into the Chancery and court of Requeſts. The miniſter, another ſort of man than WOLSEY, yet a thorough eccleſiaſtic, and bigoted, if not to the religion, yet to the policy of *Rome*, gave a countenance to this profeſſion above that of the common law. He had found the ſpirit, and even the forms of it, moſt convenient for his purpoſe in the STAR-CHAMBER and HIGH-COMMISSION court, thoſe tribunals of

imperial juſtice, exalted ſo far above the controul of the common law; and by his good will, therefore, he would have brought the ſame regimen into the other branches of the adminiſtration. Great civilians were employed to write elaborate defences of their ſcience; to the manifeſt exaltation of the prerogative; to the prejudice of the national rights and privileges; and to the diſparagement of the common law. The conſequence of theſe proceedings is well known. The moſt immediate was, that they provoked the jealouſy of the common lawyers; and, when the rupture afterwards happened, occaſioned many of the moſt eminent of them to throw themſelves into the popular ſcale [*u*].

YET, to ſee the uniformity of the views of tyranny, and the direct oppo-

[*u*] It ſhould however be obſerved, in honour of their patriotiſm, that "they afterwards took themſelves out of it," when they ſaw the extremities to which the popular party were driving.

ſition

ſition which it never fails to encounter from the *Engliſh* law, no ſooner had a ſet of violent men uſurped the liberties of their country, and with the ſword in their hands determined to rule deſpotically and in defiance of the conſtitution, than the ſame jealouſy of the common law, and the ſame contempt of it revived. Nay, to ſuch an extreme was the new tyranny carried, that the very game of EMPSON and DUDLEY was played over again. The trial of an *Engliſhman* by his peers was diſgraced and rejected; and (I ſpeak from what I felt) the perſon impriſoned and perſecuted, who dared appeal, though in his own caſe [*w*], to the

[*w*] This alludes to the proceedings againſt the *eleven members* upon the charge of the army. Sir JOHN MAYNARD was one of them. And when articles of high treaſon were preferred againſt him, and the trial was to come on before the lords, he excepted to the juriſdiction of the court, and, by a written paper preſented to them, required to be tried by his peers according to *Magna Charta, and the law of the land.* See WHITLOCKE's *Memorials*;

the ancient eſſential forms of the conſtitution. Under ſuch a ſtate of things, it is not to be wondered that much pains was taken to depreciate a law which theſe mighty men were determined not to regard. Invectives againſt the profeſſors of the *Engliſh* laws were the uſual and favoured topics of parliamentary eloquence. Theſe were ſometimes ſo indecent, and puſhed to that provoking length, that WHITLOCKE himſelf, who paced it with them through all changes, was forced in the end to hazard his reputation with his maſters, by ſtanding on the neceſſary defence of himſelf and his profeſſion [*x*].

I NEED not, I ſuppoſe, deſcend lower. Ye have both ſeen with your own eyes

and a ſhort pamphlet written on that occaſion, called THE ROYAL QUARREL, dated 9th of *Feb.* 1647.—Sir JOHN was, at this time, a cloſe priſoner in the Tower.

[*x*] See his ſpeech, inſerted in his *Memorials of Engliſh affairs, Nov.* 1649.

the

the occurrences of the late reign. Ye have heard the common language of the time. The practice was but conformable to ſuch doctrines as were current at court, where it was generally maintained, that the king's power of diſpenſing with law, was LAW; by which if theſe doctors did not intend the *imperial* or *civil law*, the inſult was almoſt too groſs to deſerve a confutation. It muſt be owned, and to the eternal ſhame of thoſe who were capable of ſuch baſeneſs, there were not wanting ſome even of the common lawyers that joined in this inſult.

I BUT touch theſe things ſlightly; for I conſider to whom I ſpeak. But if, to theſe examples of the nation's fondneſs for their laws, you add, what appears in the tenor of our hiſtories, the conſtant language of the *coronation-oaths*, of the *oaths of our judges*, and, above all, of the *ſeveral great charters*; in all which expreſs mention

is

is made of the LEX TERRÆ, in oppoſition to every foreign, but eſpecially the Cæſarean, law; you will conclude with me, "That, as certainly as the CÆSAREAN LAW is founded in the principles of ſlavery, our ENGLISH LAW, and the conſtitution to which it refers, hath its foundation in freedom, and, as ſuch, deſerved the care with which it hath been tranſmitted down to us from the earlieſt ages."

WHAT think ye now, my good friends? Is it any longer a doubt, that the conſtitution of the *Engliſh* government, ſuch I mean as it appears to have been from the moſt unqueſtioned annals of our country, is a free conſtitution? Is there any thing more in the way of this concluſion? or does it not force itſelf upon us, and lie open to the mind of every plain man that but turns his attention upon this ſubject?

You began, Mr. Somers, with great fears and apprehenſions; or you thought fit to counterfeit them, at leaſt. You ſuſpected the matter was too myſterious for common underſtandings to penetrate, and too much involved in the darkneſs of ancient times to be brought into open daylight. Let me hear your free thoughts on the evidence I have here produced to you. And yet it is a ſmall part only of that which might be produced, of that I am ſure which yourſelf could eaſily have produced, and perhaps expected from me.

But I content myſelf with theſe obvious truths, "That the liberty of the ſubject appears, and of itſelf naturally aroſe, from the very nature of the FEUDAL, which is properly (at leaſt if we look no further back than the Conqueſt) the *Engliſh* conſtitution; that the current of liberty has been gradually widening, as well as purifying, in proportion as it deſcended

deſcended from its ſource; that charters and laws have removed every ſcruple that might ariſe about the reciprocal rights and privileges of prince and people; that the ſenſe of that liberty which the nation enjoyed under their admirable conſtitution was ſo quick, that every the leaſt attempt to deprive them of it gave an alarm; and their attachment to it ſo ſtrong and conſtant, that no artifice, no intrigue, no perverſion of law and goſpel, could induce them to part with it: that, in particular, they have guarded this precious depoſite of legal and conſtitutional liberty with ſuch care, that, while the heedleſs reception of a foreign law, concurring with other circumſtances, hath riveted the yoke of ſlavery on the other nations of *Europe*, this of *England* could never be cajoled nor driven into any terms of accommodation with it; but, as NAT. BACON [*y*] ſaid truly, *That the*

[*y*] Diſc. Part I. p. 78.

triple

triple crown could never well ſolder with the Engliſh, ſo neither could the *imperial*; and that, in a word, the ENGLISH LAW hath always been preſerved inviolate from the impure mixtures of the canon and Cæſarean laws, as the ſole defence and bulwark of our civil liberties."

THESE are the plain truths, which I have here delivered to you, and on which I could be content to reſt this great cauſe; I mean, if it had not already received its formal, and, I would hope, final determination, in another way. For no pretences will ſurely prevail hereafter with a happy people to renounce that liberty, which ſo rightfully belonged to them at all times, and hath now ſo ſolemnly been confirmed to them by the great tranſactions of theſe days. I willingly omit therefore, as ſuperfluous, what in a worſe cauſe might have been thought of no ſmall weight, the expreſs teſtimony of our ableſt lawyers to the

the freedom of our conſtitution. I do not mean only the COKES and SELDENS of our time (though in point of authority what names can be greater than theirs?); but thoſe of older and therefore more reverend eſtimation, ſuch as GLANVIL, BRACTON, the author of FLETA, THORNTON, and FORTESCUE [z]: men the moſt eſteemed and learned in their ſeveral ages; who conſtantly and uniformly ſpeak of the *Engliſh*, as a mixed and limited

[z] The reader may not be diſpleaſed to ſee the words of old FORTESCUE on this ſubject of the origin of the *Engliſh* government, which are very remarkable. In his famous book *De laudibus legum Angliæ*, he diſtinguiſhes between the REGAL and POLITICAL forms of government. In explaining the *latter*, which he gives us as the proper form of the *Engliſh* government, he expreſſeth himſelf in theſe words—"Habes inſtituti omnis POLITICI REGNI formam, ex quâ metiri poteris poteſtatem, quam rex ejus in leges ipſius aut ſubditos valeat exercere: ad tutelam namque legis ſubditorum, ac eorum corporum et bonorum rex hujuſmodi erectus eſt, et hanc poteſtatem A POPULO EFFLUXAM ipſe habet, quo ei non licet poteſtate aliâ *ſuo populo dominari.*" CAP. xiii.

form

form of government, and even go ſo far as to ſeek its origin, where indeed the origin of all governments muſt be ſought, in the free will and conſent of the people.

ALL this I might have diſplayed at large; and to others perhaps, eſpecially if the cauſe had required ſuch management, all this I ſhould have diſplayed. But, independently of the judgments of particular men, which prejudice might take occaſion to object to, I hold it ſufficient to have proved from ſurer grounds, from the very form and make of our political fabric, and the moſt unqueſtioned, becauſe the moſt public, monuments of former times, "THAT THE ENGLISH CONSTITUTION IS ASSUREDLY AND INDISPUTABLY FREE [a]."

BP.

[a] It may be of little moment to us, at this day, to inquire, how far the princes of the houſe of STUART were blameable for their endeavours to uſurp on the conſtitution. But it muſt ever be of the higheſt moment to maintain, that we had a conſtitution

BP. BURNET.

You will read, Sir JOHN, in our attention to this diſcourſe, the effect it has had upon us. The zeal, with which you have pleaded the cauſe of liberty, makes me almoſt imagine I ſee you again in the warmth and ſpirit of your younger years, when you firſt made head againſt the encroachments of civil tyranny. The ſame cauſe has not only recalled to your memory the old topics of defence, but reſtores your former vigour in the management of them. So that, for myſelf, I muſt freely own, your vindication of our common liberties is, at leaſt, the moſt plauſible and conſiſtent that I have ever met with.

MR. SOMERS.

AND yet, if one was critically diſpoſed, there are ſtill, perhaps, ſome things that

ſtitution to aſſert againſt them. Party-writers perpetually confound theſe two things. It is the author's purpoſe, in theſe two Dialogues, to contend for the *latter*.

might

might deſerve a further explanation.— But enough has been ſaid by you, Sir JOHN, to ſhew us where the truth lies: and, indeed, from ſuch plain and convincing topics, that, whatever fears my love of liberty might ſuggeſt, they are much abated at leaſt, if not entirely removed, by your arguments.

BP. BURNET.

MR. SOMERS, I perceive, is not eaſily cured of his ſcruples and apprehenſions. But for my own part, Sir JOHN, I can think but of one objection of weight that can be oppoſed to your concluſion. It is, "That, notwithſtanding the clear evidence you have produced, both for the free nature of the *Engliſh* conſtitution, and the general ſenſe of the *Engliſh* nation concerning it, yet, in fact, the government was very deſpotic under the TUDOR, and ſtill more perhaps under the firſt princes of the STUART, line. How could this happen, may it be aſked,

on your plan, which ſuppoſes the popular intereſt to have been kept up in conſtant vigour, or rather to have been always gaining, inſenſibly indeed, but neceſſarily, on the power of the crown? Will not the argument then from hiſtorical evidence be turned againſt you, whilſt it may be ſaid that your theory, however plauſible, is contradicted by ſo recent and ſo well-atteſted a part of our hiſtory? And, in particular, will not the partiſans [b] of the late king and his family have to allege in their behalf, that their notions of the prerogative were but ſuch as they ſucceeded to with the crown; and, whatever may be pretended from reſearches into remoter times, that they endeavoured only to maintain the monarchy on the footing on which it had ſtood for many ſucceſſions, and on which it then ſtood when the adminiſtra-

[b] See the late Hiſtory of England by DAVID HUME, Eſq; who forms the apology of the houſe of STUART on theſe principles.

tion fell into their hands? If this point were effectually cleared, I ſee nothing that could be further deſired to a full and complete vindication of *Engliſh* liberty.

SIR J. MAYNARD.

YOUR lordſhip, I muſt own, has touched a very curious and intereſting part of our ſubject. But you muſt not believe it was ſo much overlooked by me, as purpoſely left for your lordſhip's better conſideration. You, who have looked ſo minutely and carefully into the ſtory of thoſe times, will, better than any other, be able to unfold to us the myſteries of that affair. The fact is certain, as you ſay, that the *Engliſh* government wore a more deſpotic appearance from the time of the TUDOR family's acceſſion to the throne, than in the reigns preceding that period. But I am miſtaken, if your lordſhip will not open the reaſon of it ſo clearly as to convince us, that that increaſe of prerogative was no proof of a

change in the conſtitution, and was even no ſymptom of declining liberty. I do not allow myſelf to ſpeak my ſentiments more plainly at preſent. But I am ſure, if they are juſt, they will receive a confirmation from what your lordſhip will find occaſion to obſerve to us in diſcourſing on this ſubject.

MR. SOMERS.

I WILL not diſown that this was one of the matters I had in view, when I hinted ſome remaining doubts about your general concluſion. But I knew it would not eſcape my lord of SALISBURY, who, of all others, is certainly the moſt capable of removing it.

BP. BURNET.

So that I have very unwarily, it ſeems, been providing a fine taſk for myſelf. And yet, as difficult as I foreſee it will be for me to ſatisfy two ſuch Inquirers, I ſhould not decline that taſk, if I was indeed

deed prepared for it, or if I could boaſt of ſuch a memory as Sir J. MAYNARD has ſhewn in the courſe of this converſation. But the truth is, though I have not wanted opportunities of laying in materials for ſuch a deſign, and though I have not neglected to take ſome ſlight notes of them, yet I cannot pretend to have them at once in that readineſs, as to venture on ſuch a diſcourſe as I know you expect from me. But if, againſt our next meeting, I ſhall be able to digeſt ſuch thoughts as have ſometimes occurred to me when I was engaged in the Hiſtory of the Reformation, I ſhall take a pleaſure to contribute all I can to the further and more entire elucidation of this ſubject.

be thrown off and ſupplied by ſuch as are more ſuitable and convenient; but are worn for life, though with conſtant, or rather increaſing, uneaſineſs.

THIS then being the peculiar prerogative of the feudal policy, I think we may ſay with great truth, not that the houſe of commons violated the conſtitution, but, on the contrary, that the conſtitution itſelf demanded, or rather generated, the houſe of commons.

So that I cannot by any means commend the zeal which ſome have ſhewn in ſeeking the origin of this houſe in the *Britiſh* or even *Saxon* annals. Their aim was, to ſerve the cauſe of liberty; but, it muſt be owned, at the expence of truth, and, as we now perceive, without the leaſt neceſſity.

BP. BURNET.

IT hath happened then in this, as in ſo many other inſtances, that an excellent cauſe

cauſe hath ſuffered by the ill judgment of its defenders. But, when truth itſelf had been diſgraced by one ſort of men in being employed by them to the worſt purpoſes, is it to be wondered that others ſhould not acknowledge her in ſuch hands, but be willing to look out for her in better company?

SIR J. MAYNARD.

LET us ſay, my lord, they ſhould have acknowledged her in whatever company ſhe was found; and the rather, as ill-applied truths are ſeen to be full as ſerviceable to a bad cauſe, as downright falſehoods. Beſides, this conduct had not only been fairer, but more politic. For when ſo manifeſt a truth was rejected, it was but natural to ſuſpect foul play in the reſt, and that none but a bad cauſe could want to be ſupported by ſo diſingenuous a management.

MR.

MR. SOMERS.

I THINK ſo, Sir JOHN; and there is this further uſe of ſuch candor, that it cuts off at once the neceſſity of long and laboured reſearches into the dark parts of our hiſtory; and ſo not only ſhortens the debate, but renders it much more intelligible to the people.

SIR J. MAYNARD.

I WAS aware of that advantage, and am therefore not diſpleaſed that truth allowed me to make uſe of it.—But to reſume the main argument; for I have not yet done with my evidence for the freedom of our excellent conſtitution:—It ſeemed of moment to ſhew, from the nature and conſequences of the *Norman* ſettlement, that the *Engliſh* government was eſſentially free. But, becauſe the freeſt form of government may be tamely given up and ſurrendered into the hands of a maſter, I hold it of conſequence

quence to prove, that the *Engliſh* ſpirit hath always been anſwerable to the conſtitution, and that even the moſt inſidious attempts on their liberties have never failed to awaken the reſentment of our generous forefathers. In a word, I would ſhew that the jealouſy, with which the *Engliſh* have ever guarded the national freedom, is at once a convincing teſtimony of their *right*, and of their conſtant *poſſeſſion* of it.

And though I might illuſtrate this argument by many other inſtances, I chuſe to inſiſt only on ONE, THEIR PERPETUAL OPPOSITION TO THE CIVIL AND CANON LAWS; which, at various times and for their ſeveral ends, the crown and church have been ſolicitous to obtrude on the people.

To open the way to this illuſtration, let it be obſerved that, from the time of Honorius, that is, when the *Roman* authority

thority ceaſed amongſt us, the *Saxon* inſtitutions, incorporated with the old *Britiſh* cuſtoms, were the only ſtanding laws of the kingdom. Theſe had been collected and formed into a ſort of digeſt by EDWARD the Confeſſor; and ſo great was the nation's attachment to them, that WILLIAM himſelf was obliged to ratify them, at the ſame time that the feudal law itſelf was enacted. And afterwards, on any attempt to innovate on thoſe laws, we hear of a general outcry and diſſatisfaction among the people; which jealouſy of theirs was not without good grounds; as we may ſee from an affair that happened in the Conqueror's own reign, and ſerves to illuſtrate the policy of this monarch.

IT had been an old cuſtom, continued through the *Saxon* times, for the biſhop's and ſheriffs to ſit together in judicature in the county courts. This had been found a very convenient practice; for

e preſence of the churchmen gave a
ction to the determinations of the
nporal courts, and drew an extraor-
nary reverence towards them from the
ople. Yet we find it aboliſhed by the
nqueror; who, in a reſcript to the
ſhop of *Lincoln*, ordained that, for the
ture, the biſhops and aldermen of the
ires ſhould have ſeparate courts and
parate juriſdictions. The pretence for
is alteration was, the diſtinct nature of
e two judicatures, and the deſire of
aintaining a ſtrict conformity to the
nons of the church. The real deſign
as much deeper. There is no queſtion
at WILLIAM's inclinations, at leaſt,
ere for abitrary government; in which
oject his *Norman* lawyers, it was hoped,
ight be of good uſe to him. But there
as a great obſtacle in his way. The
urchmen of thoſe times had incompara-
ly the beſt knowledge of the *Saxon* laws.
: matters not, whether thoſe church-
en were *Normans*, or not. They were
equally

equally devoted, as I obſerved before, to the *Saxon* laws, with the *Engliſh*; as favouring that independency, they affected, on the civil power. Beſides, in the Confeſſor's time, many and perhaps the greateſt of the churchmen had been *Normans*; ſo that the ſtudy of the *Saxon* laws, from the intereſt they promiſed themſelves in them, was grown familiar to the riſing eccleſiaſtics of that country. Hence, as I ſaid, the churchmen, though *Normans*, were well inſtructed in the ſpirit and genius of the *Saxon* laws; and it was not eaſy for the king's gloſſers to interpret them to their own mind, whilſt the biſhops were at hand to refute and rectify their comments.

BESIDES, the truth is (and my lord of SALISBURY will not be diſpleaſed with me for telling it), the eccleſiaſtics of that time were much indevoted to the court. They conſidered the king as the wickedeſt of all tyrants. He had brought them into

into ſubjection by their baronies, and had even ſet the pope himſelf at defiance. In this ſtate of things, there was no hope of engaging the clergy in his plot. But when a ſeparation of the two tribunals was made, and the civil courts were ſolely adminiſtered by his own creatures, the laws, it was thought, would ſpeak what language he pleaſed to require of them.

Such appears to have been the deſign of this prince in his famous diſtinction of the eccleſiaſtic and temporal courts. It was ſo artfully laid, and ſo well coloured, that the laity ſeem to have taken no umbrage at it. But the clergy ſaw his drift; and their zeal for the antient laws, as well as their reſentments, put them upon contriving methods to counteract it. They hit upon a very natural and effectual one. In a word, they all turned common lawyers; and ſo found means of introducing themſelves into the civil courts.

courts. This expedient ſucceeded ſo well, and was ſo generally reliſhed, that the clergy to a man almoſt in the next reign were become profeſſors of the common law; NULLUS CLERICUS NISI CAUSIDICUS, as WILLIAM of *Malmeſbury* takes care to inform us [y].

BP. BURNET.

WHATEVER their motive might be, the churchmen, I perceive, interpoſed very ſeaſonably in the ſupport of our civil liberties. It was a generous kind of revenge, methinks, to repay the king's tyranny over the church by vindicating the authority of the *Engliſh* laws.

SIR J. MAYNARD.

IT was ſo; and for this good ſervice, I let them paſs without any harſher reflection. Though the true ſecret is, perhaps, no more than this: Their main object

[y] DISS. AD FLET. 1091. and WILLIAM OF MALMESBURY, lib. iv. 1. 69. *Lond.* 1596.

object was the church, of whoſe intereſts, as is fitting, we will allow them to be the moſt competent judges. And, as theſe inclined them, they have been, at different junctures, the defenders or oppreſſors of civil liberty.

BP. BURNET.

AT *ſome* junctures, it may be, they have. But, if you inſiſt on ſo general a cenſure, I muſt intreat Mr. SOMERS, once more, to take upon him the defence of our order.

SIR J. MAYNARD.

ALL I intended by this inſtance, was, to ſhew the ſpirit of the *Saxon* laws, which could excite the jealouſy of the prince, and deſerve, at ſuch a ſeaſon, the patronage of the clergy. It ſeems, however, for once, as if they had a little miſconceived their true intereſts. For the diſtinction of the two judicatures, which occaſioned their reſentment, was

in the end, a great means of the hierarchical greatneſs and independency.

MATTERS continued on this footing during the three firſt of the *Norman* reigns. The prince did his utmoſt to elude the authority of the *Engliſh* laws; and the nation, on the other hand, laboured hard to confirm it. But a new ſcene was opened under King STEPHEN, by means of the *Juſtinian* laws; which had lately been recovered in *Italy*, and became at once the faſhionable ſtudy over all *Europe*. It is certain, that the Pandects were firſt brought amongſt us in that reign; and that the reading of them was much favoured by Archbiſhop THEOBALD [z], under whoſe encouragement they were publicly read in *England* by VACARIUS, within a ſhort time after the famous IRNERIUS had opened his ſchool at *Bologna*. There is ſomething ſingular in the readineſs with

[z] SELDEN's Works, vol. ii. p. 1082.

which this new ſyſtem of law was embraced in theſe weſtern parts of *Europe*. But my friend Mr. SELDEN uſed to give a plauſible account of it. It was, he ſaid [*a*], in oppoſition to INNOCENT II, who was for obtruding on the Chriſtian ſtates the *decretals*, as laws; manifeſtly calculated for the deſtruction of the civil magiſtrate's power. And what ſeems to authorize the opinion of my learned friend, is, that the popes very early took the alarm, and, by their decrees, forbad churchmen to teach the civil law: as appears from the conſtitution of ALEXANDER III, ſo early as the year 1163, in the council of TOURS; and afterwards from the famous decretal of SUPER-SPECULA by HONORIUS III, in 1219, in which the clergy of all denominations, ſeculars as well as regulars, were prohibited the ſtudy of it. And it was, doubtleſs, to defeat the miſchief which the popes apprehended to them-

[*a*] DISS. AD FLET. 1078.

ſelves, from the credit of the imperial laws, that GRATIAN was encouraged, about the ſame time, to compoſe and publiſh his DECREE; which, it is even ſaid [*b*], had the expreſs approbation of Pope EUGENIUS.

LET us ſee, now, what reception this newly-recovered law, ſo ſeverely dealt with by the pope, and ſo well entertained by the greateſt part of *Europe*, had in *England*.

VACARIUS had continued to teach it for ſome time, in the archbiſhop's palace at *Lambeth*, to great numbers, whom firſt, the novelty of the ſtudy, and then, the faſhion of the age, had drawn about him. The fame of the teacher was high, and the new ſcience had made a great progreſs, when on a ſudden it received a ſevere check, and from a quarter

[*b*] DR. DUCK, *De uſu et authoritate juris civilis*, p. 103. *Lugd. Batav.* 1654.

whence

whence one ſhould not naturally expect it. In ſhort, the king himſelf interdicted the ſtudy of it. Some have imagined, that this inhibition was owing to the ſpite he bore to archbiſhop THEOBALD. But the truer reaſon ſeems to be, that the canon law was firſt read by VACARIUS at the ſame time, and under colour of the imperial. I think we may collect thus much very clearly from JOHN OF SALISBURY, who acquaints us with this edict. For he conſiders it as an offence againſt the church, and expreſsly calls the prohibition, an IMPIETY [c].

IT is true, the decretals of GRATIAN were not yet publiſhed. But Ivo had made a collection of them in the reign of HENRY I; and we may be ſure that ſome code of this ſort would privately go about amongſt the clergy, from what was before obſerved of the pains taken

[c] POLICRATIC. lib. viii. c. 22. p. 672. *Lugd. Bat.* 1639.

by INNOCENT II, to propagate the decretals. We may further obſerve, that THEOBALD had been in high favour with INNOCENT; and that his ſchool, at *Lambeth*, was opened immediately on his return from *Rome*, whither he had been to receive his pall from this pope, on his appointment to the ſee of *Canterbury* [*d*]. All which makes it probable, that STEPHEN's diſpleaſure was not ſo much at the civil, as *canon* law, which he might well conclude had no friendly aſpect on his ſovereignty.

AND we have the greater reaſon to believe that this was the fact, from obſerving what afterwards happened in the reign of HENRY III, when a prohibition of the ſame nature was again iſſued out againſt the teachers of the *Roman* laws in *London* [*e*]. The true cauſe of the royal mandate is well known. GREGORY IX

[*d*] DISS. AD FLET. 1082. [*e*] Ibid. 1097.

had

had juſt then publiſhed a new code of the decretals; which, like all former collections of this ſort, was calculated to ſerve the papal intereſt, and depreſs the rights of princes.

HOWEVER, theſe edicts, if we ſuppoſe them levelled againſt the civil law, had no effect, any more than thoſe of the popes ALEXANDER and HONORIUS, before mentioned. For the imperial law, being generally well received by the princes of *Europe*, preſently became a kind of *Jus gentium*. And the clergy, who aſpired to power and dignities, either abroad or at home, ſtudied it with an inconceivable rage; inſomuch, that ROGER BACON tells us, that, in his time for forty years together, the ſeculars, who were the eccleſiaſtics employed in buſineſs, never publiſhed a ſingle treatiſe in divinity [*f*].

[*f*] Dr. DUCK, p. 364.

THE truth is, whatever ſhew the popes or our own princes might make, at times, of diſcountenancing the civil law, it was not the deſign of either abſolutely and univerſally to ſuppreſs it. It was properly, not the civil, but the canon law, which was diſcountenanced by our kings. And the caſe of the popes was, that, when they found the imperial law oppoſed to the *common*, they were ready to favour it; when it was oppoſed to the *canon*, and brought that into neglect, they forbad eccleſiaſtics the ſtudy of it.

MR. SOMERS.

IN the mean time the poor people, methinks, were in a fine condition, between two laws, the one founded on civil, and the other on eccleſiaſtical, tyranny. If either had prevailed, there had been an end of their liberties.

SIR

SIR J. MAYNARD.

CERTAINLY their ſituation was very critical. Yet in the end it was preciſely this ſituation that ſaved them. For betwixt theſe contentions of the crown and mitre, each endeavouring to extend its dominion over the other, the people, who were of courſe to be gained by either ſide in its diſtreſs, found means to preſerve themſelves from both.

To ſee how this happened, we muſt remember, what appears indeed from the two edicts of STEPHEN and HENRY, that the king himſelf was a bulwark betwixt them and the papal power. And when the king in his turn wanted to exalt his prerogative over all, the church very naturally took the alarm, as we ſaw in the caſe of WILLIAM's ſeparation of the two tribunals. And thus it happened, as NAT. BACON obſerves [g], "That

[g] DISC. Part I. p. 78. *Lond.* 1739.

many

many times the pope and the clergy became protectors of the people's liberties, and kept them ſafe from the rage of kings. The greateſt danger was, when the two powers chanced to unite in one common deſign againſt them; as they did in their general inclination for the eſtabliſhment of the civil law. But here the people had the courage always to defend themſelves; and with that wiſdom too, as demonſtrates their attention to the cauſe of civil liberty, and the vigilance with which they guarded even its remoteſt outworks.

Of their ſteady and watchful conduct, in this reſpect, I ſhall mention ſome of the many memorable examples, that occur in our hiſtory.

I have ſaid that from the time of Stephen, notwithſtanding his famous edict, the imperial laws were the chief and favourite ſtudy of the clergy. They had

had good reaſon for applying themſelves ſo cloſely to this ſcience, and ſtill further views than their own immediate advancement. They wanted to bring thoſe laws into the civil courts, and to make them the ſtanding rule of public adminiſtration; not merely from their good-will to the papal authority, which would naturally gain an advantage by this change, but for the ſake of controlling the too princely barons, and in hopes, no doubt, that the imperial would in due time draw the canon laws into vogue along with them. Such, I think, were at leaſt the ſecret deſigns of the ruling clergy; and they did not wait long before they endeavoured to put their project in execution. The plot was admirably laid, and with that deep policy as hath kept it, I believe, from being generally underſtood to this day.

The great men of that time were, we may be ſure, too like the great men of every

every other, to be very ſcrupulous about the commiſſion of thoſe vices to which they were moſt inclined. The truth is, their profligacy was in proportion to their greatneſs and their ignorance. They indulged themſelves in the moſt licentious amours, and even prided themſelves in this licence. The good churchmen, no doubt, lamented this corruption of manners; but, as they could not reform, they reſolved at leaſt to draw ſome emolument to themſelves from it. The caſtles of the barons, they ſaw, were full of baſtards. Nay, the courteſy of that time had ſo far dignified their vices, that the very name was had in honour. EGO GULIELMUS BASTARDUS, is even the preamble to one of WILLIAM the firſt's charters.

YET, as reſpectable as it was become, there was one unlucky check on this favourite indulgence: and this, with the barons leave, the conſiderate biſhops would

would preſently take off. Subſequent marriage, by the imperial as well as canon laws, legitimated baſtards, as to ſucceſſion; whereas the common law kept them eternally in their ſtate of baſtardy. It is not to be doubted, but the barons would be ſenſible enough of this reſtraint. They earneſtly wiſhed to get rid of it. And could any thing bid ſo fair to recommend the imperial law to their good liking, as the tender of it for ſo deſirable a purpoſe? At a parliament, therefore, under HENRY III [*b*], *Rogaverunt omnes epiſcopi, ut conſentirent quod nati ante matrimonium eſſent legitimi.* What think ye now of this general ſupplication of the hierarchy? What could the barons do but comply with it, eſpecially as it was ſo kindly intended for their relief, and the propoſal was even made with a delicacy that might enable them to come into it with a good grace, and without the ſhame of ſeeming to

[*b*] At MERTON, in the year 1236.

deſire

deſire it? All this is very true. Yet the anſwer of the virtuous barons is as follows: *Omnes comites et barones unâ voce reſpondérunt*, QUOD NOLUMUS LEGES ANGLIÆ MUTARI.

WE ſee then what ſtuck with them. Theſe barons, as licentious as they were, preferred their liberty to their pleaſure. The biſhops, they knew, as partiſans of the pope, were for ſubjecting the nation to the imperial and papal laws. They offered, indeed, to begin with a circumſtance very much to their taſte. But if they accepted the benefit of them in one inſtance, with what decency could they object to them in others? They determined therefore to be conſiſtent. They rejected a propoſition, moſt agreeable in itſelf, leſt their acceptance of it ſhould make way for the introduction of foreign laws; whoſe very genius and eſſence, they well knew, was arbitrary, deſpotic power. Their anſwer ſpeaks their ſenſe

of

of this matter, NOLUMUS LEGES ANGLIÆ MUTARI. They had nothing to object to the propoſal itſelf. But they were afraid for the conſtitution.

MR. SOMERS.

I DOUBT, Sir JOHN, my lord of SALISBURY will bring a freſh complaint againſt you, for this liberty with the biſhops. But I, who ſhall not be thought wanting in a due honour for that bench, muſt needs confeſs myſelf much pleaſed, as well with the novelty, as juſtice of this comment. I have frequently conſidered this famous reply of the old barons. But I did not ſee to the bottom of the contrivance. Their averſion to the imperial laws, as you ſay, muſt have been very great, to have put them on their guard againſt ſo inviting a propoſal.

BP. BURNET.

ONE thing, however, is forgotten or diſſembled in this account, that the law of JUSTINIAN,

JUSTINIAN, which allows the privilege of legitimation to ſubſequent marriage, is grounded on ſome reaſons that might, perhaps, recommend it to the judgment, as well as intereſt of the old prelates. Beſides, they doubtleſs found themſelves much diſtreſſed by the contrariety of the two laws in this inſtance. For the ground of their motion, as I remember, was, *Quod eſſet ſecundum communem formam eccleſiæ.* But, to deal ingenuouſly with you, Sir JOHN, you have dreſſed up your hypotheſis very plauſibly. And I, who am no advocate for the civil or eccleſiaſtical laws, in this or any inſtance where they claſh with thoſe of my country, can allow your raillery on HENRY's good biſhops, if it were only that I ſee it makes ſo much for your general argument.

SIR J. MAYNARD.

YOUR lordſhip may the rather excuſe this liberty with the *church*, as I propoſe,

poſe, in due time, to deal as freely with WESTMINSTER-HALL; a ſimilar plot, which I ſhall have occaſion to mention preſently, having been formed againſt the antient conſtitution by the men of our profeſſion.

MR. SOMERS.

IN the mean time, Sir JOHN, you muſt give me leave, in quality of advocate for the church, to obſerve one thing, that does the churchmen honour. It is, that, in theſe attempts on the conſtitution, the judges and great officers of the realm, who in thoſe times were of the clergy, conſtantly took the ſide of the *Engliſh* laws; as my Lord COKE himſelf, I remember, takes notice in his commentary on this ſtatute of MERTON.

SIR J. MAYMARD.

I BELIEVE the obſervation is very juſt. But I ſhould incline to impute this integrity, not to the influence of church

principles, but thoſe of the common law, and ſo turn your compliment to the honour of our profeſſion inſtead of theirs, if it were not too clear in fact that every profeſſion, in its turn, hath been liable to this charge of corruption.

BUT I was going on with my proofs of the national averſion to the imperial law.

THE next ſhall be taken from that famous diſpute concerning the ſucceſſion to the crown of *Scotland* in the reign of EDWARD I. For a queſtion ariſing about the kind of law by which the controverſy ſhould be decided, and it being eſpecially debated, whether the *Cæſarean* law, as a ſort of *jus gentium*, ought not in ſuch a cauſe to have the preference to the law of *England*; it was then unanimouſly determined by the great council of NORHAM, that the authority of the *Cæſarean* law ſhould by no means be

be admitted; NE INDE MAJESTATIS ANGLICANÆ JURI FIERET DETRIMENTUM [*i*].

THIS determination was public, and given on a very ſolemn occaſion. And in general we may obſerve, that at the junctures when the ſtate hath been moſt jealous of its liberty and honour, it hath declared the loudeſt againſt the *imperial laws:* as in the WONDER-WORKING parliament under RICHARD II, when the duke of *Glouceſter* accuſed the archbiſhop of *York*, the duke of *Ireland*, and other creatures of the king, of high treaſon. The charge was ſo fully proved, that the court had no other way of diverting the ſtorm, than by pretending an irregularity in the forms of procedure. To this end the lawyers were conſulted with, or more properly directed. I will diſguiſe nothing. They deſcended ſo much from the dignity of

[*i*] DISS. AD FLET. 1108.

their profeſſion, as to act in perfect ſubſerviency to the views of the court; and therefore gave it as their opinion, that the proceedings againſt the lords were of no validity, as being contrary to the forms preſcribed by the *civil law*. The barons took themſelves to be inſulted by theſe ſhifts of the lawyers. They inſiſted that the proceedings were agreeable to their own cuſtoms, and declared roundly that they would never ſuffer *England* to be governed by the *Roman* civil law [*k*].

WHAT think ye now of theſe examples? Are they not a proof that the ſpirit of liberty ran high in thoſe times, when neither the intrigues of churchmen nor the chicane of lawyers could put a ſtop to it? It ſeems as if no direct attempts on the conſtitution could have

[*k*] See FORTESCUE, *De laudibus leg. Angl.* p. 74. *Lond.* 1741; and SELDEN'S JANUS ANGLORUM, 1610, vol. ii. tom. ii.

been

been made with the leaſt appearance of ſucceſs; and that therefore the abettors of arbitrary power were obliged to work their way obliquely, by contriving methods for the introduction of a foreign law.

In this project they had many advantages, which nothing but an unwearied zeal in the cauſe of liberty could have poſſibly counteracted. From the reign of Stephen to that of Edward III, that is, for the ſpace of near 200 years, the *Roman* law had been in great credit [*l*]. All the learning of the times was in the clergy, and that learning was little more than the imperial and canon laws. The fact is ſo certain, that ſome of the clergy themſelves, when in an ill temper, or off their guard, complain of it in the ſtrongeſt terms. And to ſee the height to which this humour was carried, not the ſeculars only who intend-

[*l*] Diss. ad Flet. 1104.

ed to riſe by them, but the very monks in their cells ſtudied nothing but theſe laws [*m*]. To complete the danger, the magiſtracies and great offices of the kingdom were filled with churchmen [*n*].

WHO would expect, now, with thoſe advantages, but that the *Roman* law would have forced its way into our civil courts? It did indeed inſinuate itſelf there as it were by ſtealth, but could never appear with any face of authority. The only ſervice, that would be accepted from it, was that of illuſtration only in the courſe of their pleadings, whilſt the lawyers quoted occaſionally from the INSTITUTES, juſt as they might have done from any other ancient author [*o*]. Yet, ſo long as the churchmen preſided in the courts of juſtice, this intruder was to be reſpected; and it is pleaſant to obſerve the wire-drawing of ſome of our

[*m*] Dr. DUCK, p. 365.
[*n*] DISS. AD FLET. 1010.
[*o*] Ibid. 1106.

ableſt

ableſt lawyers, in their endeavours to make the policy of *England* ſpeak the language of *Rome*.

MR. SELDEN's diſſertation on FLETA [*p*], which lies open before me, affords a curious inſtance. The civil law ſays, "Populus ei [Cæſari] et in eum omne ſuum imperium et poteſtatem conferat;" meaning by *people*, the *Roman* people, and ſo eſtabliſhing the deſpotic rule of the prince. But BRACTON took advantage of the ambiguity, to eſtabliſh that maxim of a free government, "That all dominion ariſes from the people." This, you will ſay, was good management. But what follows is ſtill better. "Nihil aliud, ſays he, poteſt rex in terris, cum ſit Dei miniſter et vicarius, niſi quod JURE poteſt. NEC OBSTAT quod dicitur, QUOD PRINCIPI PLACET LEGIS HABET VIGOREM; quia ſequitur in fine legis, CUM LEGE REGIA QUÆ DE

[*p*] P. 1046.

IMPERIO EJUS LATA FST; id eſt, non quicquid de voluntate regis temerè præſumptum eſt, ſed quod conſilio magiſtratuum ſuorum, rege auctoritatem præſtante, et habitâ ſuper hoc deliberatione et tractatu, rectè fuerit definitum." Thus far old BRACTON; who is religiouſly followed in the ſame gloſs by THORNTON, and the author of FLETA. But what! you will ſay, this is an exact deſcription of the preſent conſtitution. It is ſo, and therefore certainly not to be found in the civil law. To confeſs the truth, theſe venerable ſages are playing tricks with us. The whole is a premeditated falſification, or, to ſay it ſofter, a licentious commentary, for the ſake of *Engliſh* liberty. The words in the PANDECTS and INSTITUTIONS are theſe; "QUOD PRINCIPI PLACUIT, LEGIS HABET VIGOREM, UTPOTE CUM LEGE REGIA, QUÆ DE IMPERIO EJUS LATA EST, POPULUS EI ET IN EUM OMNE SUUM IMPERIUM ET POTESTATEM CONFERAT."

My honeſt friend, in mentioning this extraordinary circumſtance, ſays, one cannot conſider it, *ſine ſtupore*. He obſerves, that theſe lawyers did not quote the Pandects by hear-ſay, but had copies of them; and therefore adds (for I will read on) "Unde magis mirandum quânam ratione evenerit, ut non ſolùm ipſe, adeò judiciis forenſibus clarus, et (ſi Biographis ſcriptorum noſtratium fides) profeſſor juris utriuſque Oxonienſis, verùm etiam Thorntonius juris aliàs peritiſſimus, et Fletæ author, adeò diverſam lectionem, ſenſumque diverſum atque interpretibus aliis univerſis adeò alienum in illuſtriſſimo juris Cæſarei loco explicando tam fidenter admiſerint." The difficulty, you ſee, increaſes upon him. But we ſhall eaſily remove it by obſerving, that the Cæſarean laws, though they had no proper authority with us, yet were much complimented in thoſe times, and were to be treated on all occaſions with ceremony.

And

And therefore thoſe lawyers that lived under and wanted to ſupport a free conſtitution, ſaw there was no way of ſerving their cauſe ſo effectually, as by pretending to find it in the *Roman inſtitutes*.

MR. SOMERS.

THIS management of BRACTON and his followers makes ſome amends for the ill conduct of RICHARD the ſecond's lawyers. And as to their chicanery, the ingenuity of the gloſs, we will ſuppoſe, was no more than neceſſary to correct the malignity of the text.

SIR J. MAYNARD.

THEY had, no doubt, conſulted their honour much more, by inſiſting roundly, as they might have done, that the text had no concern at all in the diſpute. But I mention theſe things only to ſhew the extreme reverence, that was then paid to the civil law, by the ſhifts the common lawyers were put to in order to

evade its influence. From which we learn how rooted the love of liberty muſt have been in this nation, and how unſhaken the firmneſs of the national councils in ſupporting it, when, notwithſtanding the general repute it was of in thoſe days, the imperial law could never gain authority enough to preſcribe to us in any matters that concerned the rights of the crown, or the property of the ſubject. And this circumſtance will be thought the more extraordinary, if it be conſidered, that, to the general eſteem in which the *Roman* law was held by the clergy, our kings have uſually added the whole weight of their influence; except indeed at ſome particular junctures, when their jealouſy of the *canon* law prevailed over their natural bias to the *civil*.

MR. SOMERS.

I SHOULD be unwilling to weaken any argument you take to be of uſe in maintaining the noble cauſe you have undertaken.

taken. But, methinks, this charge on our princes would require to be made out by other evidence [*q*] than hath been commonly produced for it. There is no doubt but many of them have aimed at ſetting themſelves above the laws of their country; but is it true (I mean, though FORTESCUE himſelf [*r*] has ſuggeſted the ſame thing) that for this purpoſe they have uſually expreſſed a partiality to the *Roman* laws?

SIR J. MAYNARD.

I BELIEVE it certain that they have, and on better reaſons than the bare word of any lawyer whatſoever.

WHAT think you of RICHARD the ſecond's policy in the inſtance before mentioned; that RICHARD, who uſed to declare, "That the laws were only in his mouth and breaſt, and that he himſelf

[*q*] Mr. SELDEN's DISS. AD FLET. 1100.
[*r*] *De laud. leg. Ang.* c. 33, 34.

could

could make and unmake them at his pleaſure?" We may know for what reaſon a prince of this deſpotic turn had recourſe to the *Roman* law.

But even his great predeceſſor is known to have been very indulgent towards it. And ſtill earlier, Edward I. took much pains to eſtabliſh rhe credit of this law; and to that end engaged the younger Accursius, the moſt renowned doctor of the age, to come over into *England*, and ſet up a ſchool of it at *Oxford*. Or, to wave theſe inſtances, let me refer you to a certain and very remarkable fact, which ſpeaks the ſenſe, not of this or that king, but of the whole ſucceſſion of our princes.

The imperial law, to this day, obtains altogether in the courts of admiralty, in courts mareſcall, and in the univerſities [s]. On the contrary, in what we

[s] Diss. ad Flet. 1102.

call

call the courts of law and equity, it never hath, nor ever could prevail. What ſhall we ſay to this remarkable difference? or to what cauſe will you aſcribe it, that this law, which was conſtantly excluded with ſuch care from the one ſort of courts, ſhould have free currency and be of ſole authority in the other? I believe it will be difficult to aſſign any other than this: that the ſubjects of deciſion in the firſt ſpecies of courts are matters in the reſort of the king's prerogative, ſuch as peace and war, and the diſtribution of honours; whilſt the ſubjects of deciſion in the courts of common law are out of his prerogative, ſuch as thoſe of liberty and property. The king had his choice by what law the firſt ſort of ſubjects ſhould be regulated; and therefore he adopted the imperial law. He had not his choice in the latter inſtance; and the people were never ſatisfied with any other than the law of the land.

MR.

MR. SOMERS.

YET Mr. SELDEN, you know, gives another reaſon of this preference: it was, he thinks, becauſe foreigners are often concerned with the natives in thoſe tribunals where the civil law is in uſe.

SIR J. MAYNARD.

TRUE; but my learned friend, as I conceive, did not attend to this matter with his uſual exactneſs. For foreigners are as frequently concerned in the courts of law and equity, as in the other tribunals. The caſe in point of reaſon is very clear. In all conteſts that are carried on between a native and a foreigner, as the ſubject of another ſtate, the deciſion ought to be by the law of nations. But when a foreigner puts himſelf with a native under the protection of our ſtate, the determination is, of courſe, by our law. The practice hath uniformly correſponded to the right in the courts of law

law and equity. In the other tribunals the right hath given way to the will of the prince, who had his reaſons for preferring the authority of the imperial law.

Upon the whole, if we conſider the veneration, which the clergy uſually entertained, and endeavoured to inculcate into the people, for the civil law; the indulgence ſhewn it by the prince; its prevalence in thoſe courts which were immediately under the prerogative; and even the countenance ſhewn it at times in the couſe of pleading at common law; we cannot avoid coming to this ſhort concluſion, "That the genius of the imperial laws was repugnant to our conſtitution; and that nothing but the extreme jealouſy of the barons, leſt they might prove, in pleas of the crown, injurious to civil liberty, hath kept them from being received in *England* on the ſame footing that we every where find they

they are in the other countries of *Europe*, and as they are in *Scotland* to this day.

But, if you think I draw this concluſion too haſtily, and without grounding it on ſufficient premiſes, you may further conſider with me, if you pleaſe, THE FATE AND FORTUNES OF THE CIVIL LAW IN THIS KINGDOM DOWN TO THE PRESENT TIME.

In the reigns of Henry VII [*t*] and VIII, and the two firſt kings of the houſe of

[*t*] The ſpeaker might have begun this account of the *fate and fortunes* of the civil law ſtill higher. Nat. Bacon, ſpeaking of Henry the fifth's reign, obſerves, "The times were now come about, wherein light began to ſpring forth, conſcience to beſtir itſelf, and men to ſtudy the ſcriptures. This was imputed to the idleneſs and careleſſneſs of the clergy, who ſuffered the minds of young ſcholars to luxuriate into errors of divinity, for want of putting them on to other learning; and gave no encouragement to ſtudies of human literature, by preferring thoſe that were deſerving. The convocation taking this into conſideration, do decree, that no perſon ſhould exerciſe any juriſdiction in any office, as

of STUART, that is, the moſt deſpotic of our princes, the ſtudy of the civil law hath been more eſpecially favoured; as we might conclude from the general ſpirit of thoſe kings themſelves, but as we certainly know from the countenance they ſhewed to its profeſſors; from their chuſing to employ them in their buſineſs, and from the ſalaries and places they

vicar-general, *commiſſary*, or *official*, or otherwiſe, unleſs he ſhall firſt in the univerſity have taken degrees in the CIVIL OR CANON LAWS. A ſhrewd trick this was, to ſtop the growth of the ſtudy of divinity, and WICKLIFF's way; and to embelliſh men's minds with a kind of learning that may gain them preferment, or at leaſt an opinion of abilities beyond the common ſtrain, and dangerous to be meddled with. Like ſome gallants, that wear ſwords as badges of honour, and to bid men beware, becauſe they poſſibly may ſtrike, though in their own perſons they may be very cowards. And no leſs miſchievouſly intended was this againſt the rugged COMMON LAW, a rule ſo nigh allied to the goſpel-way, as it favoureth liberty; and ſo far eſtranged from the way of the civil and canon law, as there is no hope of accommodation till Chriſt and Antichriſt have fought the field." DISC. Part II. p. 90. *Lond.* 1739.

provided for their encouragement. Yet ſee the iſſue of all this indulgence to a foreign law, and the treatment it met with from our parliaments and people! The oppreſſions of EMPSON and DUDLEY had been founded in a ſtretch of power, uſurped and juſtified on the principles of the civil law; by which theſe miſcreants had been enabled to violate a fundamental part of our conſtitution, the way of *trial by* JURIES. The effect on the people was dreadful. Accordingly, in the entrance of the next reign, though the authority, by which they had acted, had even been parliamentary, theſe creatures of tyranny were indicted of high treaſon, were condemned and executed for having been inſtrumental in ſubverting LEGEM TERRÆ; and the extorted ſtatute, under which they had hoped to ſhelter themſelves, was with a juſt indignation repealed.

YET all this was conſidered only as a neceſſary ſacrifice to the clamours of an incenſed people. The younger HENRY, we may be ſure, had ſo much of his father in him, or rather ſo far outdid him in the worſt parts of his tyranny, that he could not but look with an eye of favour on the very law he had been conſtrained to aboliſh. His great eccleſiaſtical miniſter was, no doubt, in the ſecret of his maſter's inclinations, and conducted himſelf accordingly. Yet the vengeance of the nation purſued and overtook him in good time. They reſented his diſloyal contempt of the original conſtitution; and made it one of the articles againſt this *Roman* cardinal, "That he endeavoured to ſubvert *antiquiſſimas leges hujus regni, univerſumque hoc regnum* LEGIBUS IMPERIALIBUS *ſubjicere.*"

FROM

FROM this time, the ſtudy of the civil law was thought to languiſh in *England*, till it revived with much ſpirit in the reigns of thoſe unhappy princes who ſucceeded to the houſe of TUDOR. Then indeed, by inclination and by pedantry, JAMES I. was led to patronize and encourage it. And the ſame project was reſumed, and carried ſtill further, by his unfortunate ſon. I ſpeak now from my own experience and obſervation. The civil lawyers were moſt welcome at court. They were brought into the Chancery and court of Requeſts. The miniſter, another ſort of man than WOLSEY, yet a thorough eccleſiaſtic, and bigoted, if not to the religion, yet to the policy of *Rome*, gave a countenance to this profeſſion above that of the common law. He had found the ſpirit, and even the forms of it, moſt convenient for his purpoſe in the STAR-CHAMBER and HIGH-COMMISSION court, thoſe tribunals of

imperial juſtice, exalted ſo far above the controul of the common law; and by his good will, therefore, he would have brought the ſame regimen into the other branches of the adminiſtration. Great civilians were employed to write elaborate defences of their ſcience; to the manifeſt exaltation of the prerogative; to the prejudice of the national rights and privileges; and to the diſparagement of the common law. The conſequence of theſe proceedings is well known. The moſt immediate was, that they provoked the jealouſy of the common lawyers; and, when the rupture afterwards happened, occaſioned many of the moſt eminent of them to throw themſelves into the popular ſcale [*u*].

YET, to ſee the uniformity of the views of tyranny, and the direct oppo-

[*u*] It ſhould however be obſerved, in honour of their patriotiſm, that "they afterwards took themſelves out of it," when they ſaw the extremities to which the popular party were driving.

ſition

ſition which it never fails to encounter from the *Engliſh* law, no ſooner had a ſet of violent men uſurped the liberties of their country, and with the ſword in their hands determined to rule deſpotically and in defiance of the conſtitution, than the ſame jealouſy of the common law, and the ſame contempt of it revived. Nay, to ſuch an extreme was the new tyranny carried, that the very game of EMPSON and DUDLEY was played over again. The trial of an *Engliſhman* by his peers was diſgraced and rejected; and (I ſpeak from what I felt) the perſon impriſoned and perſecuted, who dared appeal, though in his own caſe [*w*], to the

[*w*] This alludes to the proceedings againſt the *eleven members* upon the charge of the army. Sir JOHN MAYNARD was one of them. And when articles of high treaſon were preferred againſt him, and the trial was to come on before the lords, he excepted to the juriſdiction of the court, and, by a written paper preſented to them, required to be tried by his peers according to *Magna Charta, and the law of the land.* See WHITLOCKE's *Memorials*;

the ancient eſſential forms of the conſtitution. Under ſuch a ſtate of things, it is not to be wondered that much pains was taken to depreciate a law which theſe mighty men were determined not to regard. Invectives againſt the profeſſors of the *Engliſh* laws were the uſual and favoured topics of parliamentary eloquence. Theſe were ſometimes ſo indecent, and puſhed to that provoking length, that WHITLOCKE himſelf, who paced it with them through all changes, was forced in the end to hazard his reputation with his maſters, by ſtanding on the neceſſary defence of himſelf and his profeſſion [*x*].

I NEED not, I ſuppoſe, deſcend lower. Ye have both ſeen with your own eyes

and a ſhort pamphlet written on that occaſion, called THE ROYAL QUARREL, dated 9th of *Feb.* 1647.—Sir JOHN was, at this time, a cloſe priſoner in the Tower.

[*x*] See his ſpeech, inſerted in his *Memorials of Engliſh affairs, Nov.* 1649.

the

is made of the LEX TERRÆ, in oppoſition to every foreign, but eſpecially the Cæſarean, law; you will conclude with me, "That, as certainly as the CÆSAREAN LAW is founded in the principles of ſlavery, our ENGLISH LAW, and the conſtitution to which it refers, hath its foundation in freedom, and, as ſuch, deſerved the care with which it hath been tranſmitted down to us from the earlieſt ages."

WHAT think ye now, my good friends? Is it any longer a doubt, that the conſtitution of the *Engliſh* government, ſuch I mean as it appears to have been from the moſt unqueſtioned annals of our country, is a free conſtitution? Is there any thing more in the way of this concluſion? or does it not force itſelf upon us, and lie open to the mind of every plain man that but turns his attention upon this ſubject?

You began, Mr. Somers, with great fears and apprehenſions; or you thought fit to counterfeit them, at leaſt. You ſuſpected the matter was too myſterious for common underſtandings to penetrate, and too much involved in the darkneſs of ancient times to be brought into open daylight. Let me hear your free thoughts on the evidence I have here produced to you. And yet it is a ſmall part only of that which might be produced, of that I am ſure which yourſelf could eaſily have produced, and perhaps expected from me.

But I content myſelf with theſe obvious truths, "That the liberty of the ſubject appears, and of itſelf naturally aroſe, from the very nature of the feudal, which is properly (at leaſt if we look no further back than the Conqueſt) the *Engliſh* conſtitution; that the current of liberty has been gradually widening, as well as purifying, in proportion as it deſcended

deſcended from its ſource; that charters and laws have removed every ſcruple that might ariſe about the reciprocal rights and privileges of prince and people; that the ſenſe of that liberty which the nation enjoyed under their admirable conſtitution was ſo quick, that every the leaſt attempt to deprive them of it gave an alarm; and their attachment to it ſo ſtrong and conſtant, that no artifice, no intrigue, no perverſion of law and goſpel, could induce them to part with it: that, in particular, they have guarded this precious depoſite of legal and conſtitutional liberty with ſuch care, that, while the heedleſs reception of a foreign law, concurring with other circumſtances, hath riveted the yoke of ſlavery on the other nations of *Europe*, this of *England* could never be cajoled nor driven into any terms of accommodation with it; but, as NAT. BACON [*y*] ſaid truly, *That the*

[*y*] DISC. Part I. p. 78.

triple

DIALOGUE V.

On the CONSTITUTION of the ENGLISH Government.

SIR JOHN MAYNARD, MR. SOMERS, BISHOP BURNET.

TO DR. TILLOTSON.

OUR next meeting at Sir J. MAYNARD's was on the evening of that day, when the war was proclaimed againſt *France* [c]. What the event of it will be, is a ſecret in the counſels of Providence. But if the goodneſs of our cauſe, his majeſty's known wiſdom and ability, and, above all, the apparent zeal and firmneſs of all orders amongſt us in ſupport of this great undertaking, may

[c] 7 May, 1689.

give a proſpect of ſucceſs, we cannot, I perſuade myſelf, but indulge in the moſt reaſonable hopes and expectations.

PERHAPS, the time is approaching, my dear friend, which the divine goodneſs hath decreed for putting a ſtop to that outrageous power, which hath been permitted for ſo long a courſe of years to afflict the neighbouring nations. It may be, the ſeaſon is now at hand, when God will vouchſafe to plead the cauſe of his ſervants, and let this mighty perſecutor of the faithful know that he may not be ſuffered any longer to trample on the ſacred rights of conſcience. He may be taught to feel, that the ravages he hath committed in the faireſt provinces, and the cruelties he hath exerciſed on the beſt ſubjects, of his own kingdom, have at length awakened the divine diſpleaſure againſt him. And he may live to find in our great prince (raiſed up, as I verily believe, to this eminence

eminence of place and power to be the ſcourge of tyrants, and the vindicator of oppreſſed nations) an inſurmountable bulwark againſt that encroaching dominion, which threatens to deform and lay waſte the reſt of *Europe*.

I HAVE already lived to ſee thoſe providences, which may encourage a ſerious and good mind to believe that ſome great work is preparing in our days. I was very early in my life a witneſs to the high meaſures which were taken and carried on by an intolerant hierarchy, acting in ſubſerviency to an arbitrary court, in mine own country of *Scotland*. And I have lamented the oppreſſion in which good men were held for conſcience ſake in all the three kingdoms. How far this tyranny was carried, and how near we were brought to the deſtruction of all our civil and religious rights, need not be told, and the occurrences of the two laſt reigns will not ſuffer to be for-

BP. BURNET.

You will read, Sir JOHN, in our attention to this diſcourſe, the effect it has had upon us. The zeal, with which you have pleaded the cauſe of liberty, makes me almoſt imagine I ſee you again in the warmth and ſpirit of your younger years, when you firſt made head againſt the encroachments of civil tyranny. The ſame cauſe has not only recalled to your memory the old topics of defence, but reſtores your former vigour in the management of them. So that, for myſelf, I muſt freely own, your vindication of our common liberties is, at leaſt, the moſt plauſible and conſiſtent that I have ever met with.

MR. SOMERS.

AND yet, if one was critically diſpoſed, there are ſtill, perhaps, ſome things that

ſitution to aſſert againſt them. Party-writers perpetually confound theſe two things. It is the author's purpoſe, in theſe two Dialogues, to contend for the *latter*.

might

now employed to ſhake it off from the necks of our Proteſtant brethren on the continent [e]? The world hath ſeen how long and how ſeverely they have groaned under that intolerant power, with which we are now at war. When the violences of the late reign had driven me into a ſort of voluntary exile, and in the courſe of it I traverſed ſome of thoſe unhappy provinces of *France*, which were moſt expoſed to the rigours of perſecution [f], how have theſe eyes wept

[e] This was the talk of men at that time. It was perhaps in the king's intention. But the deſign, if it had ever been formed, miſcarried; as the Biſhop himſelf obſerves in his Hiſtory—"The moſt "melancholy part of the treaty of *Ryſwick* was, that "no advantages were got by it, in favour of the "Proteſtants in *France*." Vol. iv. p. 295. *Edinb.* 1753.—Whether the blame of this lies in the king, or his parliaments, or neither, the reader is left to judge for himſelf, from conſidering the ſtate and tranſactions of thoſe times.

[f] Theſe rigours the biſhop gives a particular account of in THE HISTORY OF HIS OWN TIMES, vol iii. *Edinb.* 1753.—Speaking of the perſecution of

on your plan, which ſuppoſes the popular intereſt to have been kept up in conſtant vigour, or rather to have been always gaining, inſenſibly indeed, but neceſſarily, on the power of the crown? Will not the argument then from hiſtorical evidence be turned againſt you, whilſt it may be ſaid that your theory, however plauſible, is contradicted by ſo recent and ſo well-atteſted a part of our hiſtory? And, in particular, will not the partiſans [b] of the late king and his family have to allege in their behalf, that their notions of the prerogative were but ſuch as they ſucceeded to with the crown; and, whatever may be pretended from reſearches into remoter times, that they endeavoured only to maintain the monarchy on the footing on which it had ſtood for many ſucceſſions, and on which it then ſtood when the adminiſtra-

[b] See the late Hiſtory of England by DAVID HUME, Eſq; who forms the apology of the houſe of STUART on theſe principles.

themſelves of the common notices and principles of humanity.

In this fiery trial it hath pleaſed God to exerciſe the faith and virtues, and, as we may charitably hope, to correct the failings and vices, of his poor ſervants. His mercy may now, in due time, be opening a way for them to eſcape. And from the proſperous beginning of this great work, what comfortable preſages may we not, in all humility, form to ourſelves of ſtill further ſucceſſes?

We have a prince on the throne exactly qualified for the execution of this noble enterpriſe; of the cleareſt courage and magnanimity, and a wiſdom tried and perfected in that beſt ſchool, of Adverſity; of diſpoſitions the moſt enlarged to the ſervice of mankind; and even quickened by his own perſonal reſentment of former injuries to retaliate againſt their common oppreſſor.

Nor

change in the conſtitution, and was even no ſymptom of declining liberty. I do not allow myſelf to ſpeak my ſentiments more plainly at preſent. But I am ſure, if they are juſt, they will receive a confirmation from what your lordſhip will find occaſion to obſerve to us in diſcourſing on this ſubject.

MR. SOMERS.

I WILL not diſown that this was one of the matters I had in view, when I hinted ſome remaining doubts about your general concluſion. But I knew it would not eſcape my lord of SALISBURY, who, of all others, is certainly the moſt capable of removing it.

BP. BURNET.

So that I have very unwarily, it ſeems, been providing a fine taſk for myſelf. And yet, as difficult as I foreſee it will be for me to ſatisfy two ſuch Inquirers, I ſhould not decline that taſk, if I was indeed

But to turn from theſe flattering views, my good friend, to the recital of our late converſation; which I proceed to lay before you with the ſame exactneſs and punctuality that I did the former. You will ſee the reaſon why I cannot promiſe you the ſame entertainment from it.

We had no ſooner come together, than Sir J. Maynard began with his uſual vivacity. "I have been thinking, my lord, how dexterous a game I have played with you, in this inquiry of ours into the *Engliſh* government. What was obvious enough in itſelf, and had indeed been undertaken by many perſons, I mean the vindication of our common liberties as founded in the ancient feudal conſtitution, is the part I aſſumed to myſelf in this debate; and have left it to your lordſhip to reconcile the FACT to the RIGHT: which is not only the moſt,

conjecture in what way your lordſhip will go about to extricate yourſelf from theſe difficulties.

BP. BURNET.

I UNDERSTAND, Sir JOHN, that your intention in ſetting forth the difficulties of this attempt is only, in your polite way, to enhance the merit of it. I muſt not however aſſume too much to myſelf. The way is clear and eaſy before me. You have conducted us very agreeably through the rough and thorney part of our journey. You have opened the genius of our antient conſtitution. You have explained the principles on which it was raiſed. All that remains for me is, only to ſolve doubts, and rectify appearances; a matter of no great difficulty, when, inſtead of groping in the dark, we are now got into open daylight, and are treading in the paths of known and authentic hiſtory.

give a proſpect of ſucceſs, we cannot, I perſuade myſelf, but indulge in the moſt reaſonable hopes and expectations.

PERHAPS, the time is approaching, my dear friend, which the divine goodneſs hath decreed for putting a ſtop to that outrageous power, which hath been permitted for ſo long a courſe of years to afflict the neighbouring nations. It may be, the ſeaſon is now at hand, when God will vouchſafe to plead the cauſe of his ſervants, and let this mighty perſecutor of the faithful know that he may not be ſuffered any longer to trample on the ſacred rights of conſcience. He may be taught to feel, that the ravages he hath committed in the faireſt provinces, and the cruelties he hath exerciſed on the beſt ſubjects, of his own kingdom, have at length awakened the divine diſpleaſure againſt him. And he may live to find in our great prince (raiſed up, as I verily believe, to this eminence

according as either was checked or favoured by contingent circumſtances.

BP. BURNET.

STILL Mr. SOMERS, I ſee, is on the deſponding ſide: and with better reaſon than before; ſince, if the difficulty be half ſo great as is pretended, this change of the ſpeaker is little favourable to the removal of it. However, I do not deſpair, whether theſe ſurmiſes of difficulty be real or diſſembled, to clear up the whole matter to both your ſatisfactions. The ſtreſs of it lies here: That, whereas a mixed and limited government is ſuppoſed to have been the antient conſtitution in this country, the appearances, in fact, for a couple of centuries, have been ſo repugnant to this notion, that either the ſuppoſition muſt be given up as too haſtily formed, or ſufficient reaſons muſt be aſſigned for theſe contradictory appearances. I embrace the latter part of this alternative

gotten. It is ſufficient to obſerve, that when the danger was now brought to a criſis, and the minds of all men were filled with the moſt alarming apprehenſions, it pleaſed God to reſcue us, in a moment and by the moſt aſtoniſhing diſplay of his goodneſs, from the impending ruin. Our chains fell off at once, as by a miracle of mercy. Our civil rights have been reſtored. And the legal toleration [*d*], we have juſt now obtained in conſequence of the new ſettlement, hath put us into poſſeſſion of that religious liberty, which, as men, as Chriſtians, and as Proteſtants, we cannot but eſteem the firſt of all public bleſſings.

And who knows but that, in the gracious deſigns of heaven, the ſame hand which hath redeemed theſe nations from the yoke of ſlavery and of *Rome*, may be

[*d*] The act of toleration did not paſs till 24 *May*, 1689; which lets us ſee at what time this preface is *ſuppoſed* to have been drawn up.

now

ſize, and, as one ſays [*b*], *feared nothing but the falling of the heavens*, was admirably formed to ſuſtain and eſtabliſh that power, which the other had aſſumed. And after two ſhort reigns, which afforded the people no opportunity of recovering their loſt ground, the crown ſettled on the head of a princeſs, who, with the united qualifications of her father and grandfather, ſurpaſſed them both in the arts of a winning and gracious popularity. And thus, in the compaſs of a century, the prerogative was now wound up to a height, that was very flattering to the views and inclinations of the STUART family.

IT may be further obſerved, that the condition of the times was ſuch as wonderfully conſpired with the deſigns and diſpoſitions of theſe princes.

[*b*] NAT. BACON, in his Diſc. part II. p. 125. *Lond.* 1739.

wept over the diſtreſſes of the poor ſufferers, and how hath my heart bled for the mercileſs cruelties which I every where ſaw exerciſed upon them! The fury which appeared on that occaſion, was ſo general and ſo contagious, that not only prieſts and court ſycophants, but men of virtuous minds and generous tempers, were tranſported, as it were, out of their proper nature, and ſeemed to diveſt

of the *French* Proteſtants, he ſays, "I went over a "great part of *France*, while it was in its hotteſt "rage, from *Marſeilles* to *Montpelier*, and from "thence to *Lyons*, and ſo on to *Geneva*. I ſaw and "knew ſo many inſtances of their injuſtice and vio-"lence, that it exceeded even what could have been "well imagined; for all men ſet their thoughts "on work to invent new methods of cruelty. In "all the towns through which I paſſed, I heard the "moſt diſmal accounts of things poſſible." p. 60.—Again—"The fury that appeared on this occaſion "did ſpread itſelf with a ſort of contagion: for the "intendants and other officers, that had been mild "and gentle in the former parts of their life, ſeemed "now to have laid aſide the compaſſion of Chriſtians, "the breeding of gentlemen, and the impreſſions "of humanity." p. 61.

themſelves

And, laſtly, the regal power, which had gained ſo immenſely by the rejection of the papal dominion, was carried ſtill higher by the great work of reformation; which being conducted by a wiſe and able princeſs, was eaſily improved, on every occaſion, to the advantage of the crown.

And thus, whether we conſider the characters of the perſons, or the circumſtances of the times, every thing concurred to exalt the princes of the houſe of Tudor to a height of power and prerogative, which had hitherto been unknown in *England*, and became, in the end, ſo dangerous to the conſtitution itſelf.

But you expect me, I ſuppoſe, to point to the very examples of uſurpation, I have in view, and the means by which it took effect in the hands of theſe and the ſucceeding princes.

NOR can we doubt of the concurrence of his faithful ſubjects, who, with one voice, have demanded the commencement of this war; and whoſe late deliverance, from like circumſtances of diſtreſs, may be expected to animate their zeal in the ſupport of it.

AND oh! that I might ſee the day, when our deliverer ſhall become, what a bold uſurper nobly figured to himſelf in the middle of this century [g], the ſoul and conductor of the Proteſtant cauſe through all *Europe!* and, that, as *Rome* hath hitherto been the centre of ſlaviſh impoſitions and anti-chriſtian politics, the court of *England* may henceforth be the conſtant refuge and aſylum of fainting liberty and religion!

[g] Meaning CROMWELL, who, it ſeems, had a deſign of ſetting up "a council for the Proteſtant "religion, in oppoſition to the congregation *de pro-* "*pagandâ fide* at *Rome*." See the Biſhop's own account in his Hiſt. vol. i. p. 109.

BUT

will have me uſurp the chair on this occaſion, and, like the princes I am ſpeaking of, take to myſelf an authority to which I have no right, let me preſume a little on my new dignity; and, in what follows, diſcourſe to you, as our manner is, without interruption or reply.

SIR J. MAYNARD.

THIS, it muſt be owned, is carrying the prerogative of the chair to its utmoſt height. But, if we ſubmit to it in other places, is it reaſonable you ſhould require us to do ſo here? Beſides, your lordſhip forgets that I am too old to be a patient hearer. And Mr. SOMERS too—

MR. SOMERS.

I CAN engage, in this inſtance, for paſſive obedience. And my lord, perhaps, does not inſiſt on the full extent of his prerogative. It is fit, however, we attend with reverence, while ſuch an advocate is pleading in ſuch a cauſe.

moſt material point of inquiry, but the moſt difficult; and that which the patrons of liberty have either leſs meddled with, or have leſs ſucceeded in explaining. For, to own an unwelcome truth, however ſpecious our claim may be to civil liberty, the adminiſtration of government from the time of HENRY VII's acceſſion to the crown, that is, for two entire centuries, has very little agreed to this ſyſtem. The regal power, throughout this period, has been uniformly exerciſed in ſo high and arbitrary a manner, that we can hardly believe there could be any certain foundation for the people's claim to a limited monarchy. Add to this, that the language of parliaments, the decrees of lawyers, and the doctrines of divines, have generally run in favour of the higheſt exertions of prerogative. So that I cannot but be in ſome pain for the ſucceſs of your undertaking, and am at a loſs to conjecture

conjecture in what way your lordſhip will go about to extricate yourſelf from theſe difficulties.

BP. BURNET.

I UNDERSTAND, Sir JOHN, that your intention in ſetting forth the difficulties of this attempt is only, in your polite way, to enhance the merit of it. I muſt not however aſſume too much to myſelf. The way is clear and eaſy before me. You have conducted us very agreeably through the rough and thorney part of our journey. You have opened the genius of our antient conſtitution. You have explained the principles on which it was raiſed. All that remains for me is, only to ſolve doubts, and rectify appearances; a matter of no great difficulty, when, inſtead of groping in the dark, we are now got into open daylight, and are treading in the paths of known and authentic hiſtory.

MR. SOMERS.

AND yet, my lord, I ſhall very readily acknowledge, with my lord commiſſioner, the importance of the ſervice. For, unleſs appearances be ſtrangely deceitful indeed, there is but too great reaſon to conclude, from the recent parts of our hiſtory, either that there never was a rightful claim in the people to civil liberty, or that they, as well as their princes, had loſt all ſenſe of it. I doubt, the moſt your lordſhip can make appear, is, that as our kings, from the coming of the TUDOR line, had uſurped on the antient privileges of the ſubject; ſo the ſubject, at length, in our days, has, in its turn, uſurped on the undiſputed and long-acknowledged prerogative of the ſovereign. In ſhort, I doubt there is no forming a connected ſyſtem on theſe ſubjects; but that in our country, as well as in others, liberty and prerogative have prevailed and taken the aſcendant at different times,

according

purpoſe) againſt RETAINERS. And with how jealous a ſeverity he put thoſe laws into execution, is ſufficiently known from his treatment of one of his principal friends and ſervants, the earl of OXFORD [*i*].

IT was alſo with a view to this depreſſion of the nobility, that the court of STAR-CHAMBER was conſidered ſo much, and confirmed by act of parliament in his reign: "That which was principally aimed at by it being, as his hiſtorian frankly owns, FORCE, and the two chief ſupports of Force, COMBINATION OF MULTITUDES, and maintainance or HEADSHIP OF GREAT PERSONS."

To put them ſtill lower in the public eſtimation, he affected to fill the great offices with churchmen only. And it was perhaps, as much to awe the nation

[*i*] The ſtory is told by Lord BACON in his hiſtory of this prince.

by

without heſitation or reſerve; and pretend to lay before you ſuch unanſwerable arguments for the cauſe I have undertaken, as, in better hands, might amount to a perfect vindication of ENGLISH LIBERTY.

I TAKE my riſe from the period which my lord commiſſioner has preſcribed to me; that is, from the acceſſion of the TUDOR family.

WE have henceforth, indeed, a ſucceſſion of high deſpotic princes, who were politic and daring enough to improve every advantage againſt the people's liberties. And their peculiar characters were well ſuited to the places in which we find them. Henry VII. was wiſe and provident; jealous of his authority as well as title; and fruitful in expedients to ſecure both. His ſon and ſucceſſor, who had a ſpirit of the largeſt ſize,

end it ſerved, beſide his expectation, to advance another and more formidable power, at that time little ſuſpected or even thought of, the POWER OF THE PEOPLE [*k*].

THE truth is, HENRY's policy was every way much aſſiſted by the genius of the time. Trade was getting up: and Lollardiſm had ſecretly made its way into the hearts of the people. And, though *liberty* was in the end to reap the benefit of each, *prerogative* was the immediate gainer. Commerce, in proportion to its growth, brought on the decline of the feudal, that is, ariſtocratic power of the barons: and the authority of the church, that other check on the ſovereign, was gradually weakened by the prevailing ſpirit of reformation.

[*k*] He did not conſider that maxim of the Lord BACON, "Depreſſion of the nobility may make a king more abſolute, but leſs ſafe." Works, vol. iii. p. 296.

UNDER

A LONG and bloody war, that had well nigh exhauſted the ſtrength and vitals of this country, was, at length, compoſed by the fortunate ſucceſſes of *Boſworth-field*. All men were deſirous to breathe a little from the rage of civil wars. And the enormous tyranny of the prince, whoſe death had made way for the exaltation of the earl of RICHMOND, was a ſort of foil to the new government, and made the rigours of it appear but moderate when ſet againſt the cruelties of the preceding reign.

THE great change that followed, in the deliverance of the nation from papal tyranny, and the ſuppreſſion of religious houſes, was a new pretence for the extenſion of the royal prerogative; and the people ſubmitted to it with pleaſure, as they ſaw no other way to ſupport and accompliſh that important enterpriſe.

AND,

THERE was, beſides, another circumſtance of great moment attending the government of the younger HENRY. He was the firſt heir of the white and red roſes: ſo that there was now an end of all diſpute and diſaffection in the people. And they had ſo long and ſo violently contended about the title to the crown, that, when that mighty point was once ſettled, they did not readily apprehend that any other conſideration deſerved, or could juſtify, reſiſtance to their ſovereign.

WITH theſe advantages of ſituation, HENRY VIII brought with him to the throne a ſpirit of that firm and ſteady temper as was exactly fitted to break the edge of any riſing oppoſition. Beſides the confidence of youth, he was of a nature ſo elate and imperious, ſo reſolved and fearleſs [*m*], that no reſiſtance could ſucceed, hardly

[*m*] "A man, as Mr. BACON characteriſes him,

SIR J. MAYNARD.

WE do indeed expect that from your lordſhip. For otherwiſe it will be thought that what you treat as an uſurpation, was but the genuine exerciſe of the regal authority; only favoured by fortunate conjunctures, and, as you ſay, by great ability in the princes themſelves.

MR. SOMERS.

PERHAPS, ſtill more will be expected. For it may not be enough to tell us, what uſurpations there were, or even by what means they became ſucceſsful. It ſhould further appear, methinks, that theſe uſurpations, though they ſuſpended the exerciſe of the peoples liberties, did not deſtroy them; did not, at leaſt, annihilate the CONSTITUTION from which thoſe liberties were derived.

BP. BURNET.

ALL this will naturally come in our way, as we go along. And, ſince you will

our kings had groaned for ſo many ages, was in a moment broken off, and the crown reſtored to its full and perfect independency.

Nor was this all. The throne did not only ſtand by itſelf, as having no longer a dependence on the papal chair. It roſe ſtill higher, and was, in effect, erected upon it. For the eccleſiaſtical juriſdiction was not annihilated, but tranſferred; and all the powers of the *Roman* pontiff now centered in the king's perſon. Henceforth then we are to regard him in a more awful point of view; as armed with both ſwords at once; and, as Nat. Bacon expreſſes it in his way, as a ſtrange kind of monſter, "A king with a pope in his belly [*n*]."

The remainder of his reign ſhews that he was politic enough to make the beſt uſe of what his paſſions had brought

[*n*] Disc. Part II. p. 125.

BP. BURNET.

I WAS ſaying, that all your demands would be ſatisfied, as I went along in this diſcourſe. It is true, an attentive reader of our hiſtory, who conſiders what is ſaid of the mixed frame of our government, and the ſtruggles that were occaſioned by it, is ſurpriſed to find that theſe contentions at once ſubſided on the acceſſion of the houſe of TUDOR; and that the tenour of the government thenceforth for many ſucceſſions is as calm, and the popular influence as ſmall, as in the moſt abſolute and deſpotic forms. This appearance tempts him to conclude, that the crown had at length redeemed itſelf from a forced, unconſtitutional ſervitude; and that, far from uſurping on the people, it only returned to the exerciſe of its old and acknowledged rights. For otherwiſe it will be ſaid, how could the people at once become ſo inſenſible, and their repreſentatives in parliament ſo tame,

ing revolution, which had juſt happened, was, at all events, to be ſupported: and thus, partly by fear, and partly by intereſt, the parliament went along with the king in all his projects; and, beyond the example of former times, was conſtantly obſequious to him, even in the moſt capricious and inconſiſtent meaſures of his government.

And thus matters, in a good degree, continued till the acceſſion of Queen Elizabeth. It is true, the weak adminiſtration of a minor king, and a diſputed title at his death, occaſioned ſome diſorders. But the majeſty of the crown itſelf was little impaired by theſe buſtles; and it even acquired freſh glory on the head of our renowned Proteſtant princeſs.

For that aſtoniſhing work of reformation, ſo happily entered upon by Henry, and carried on by his ſon, was after a ſhort interruption (which only ſerved to

if the nation had been ever ſo ill inclined towards it. The great lords or barons were, in former days, both by the feudal conſtitution, and by the vaſt property they had in their hands, the proper and only check on the ſovereign. Theſe had been either cut off, or ſo far weakened at leaſt by the preceding civil wars, that the danger ſeemed entirely over from that quarter. The politic king was aware of his advantage, and improved it to admiration. One may even affirm, that this was the ſole object of his government.

For the greater ſecurity, and majeſty of his perſon, he began with the inſtitution of his LIFEGUARD. And having thus ſet out with enlarging his own train, his next care was to diminiſh that of his nobles. Hence the law, or rather laws (for, as Lord BACON obſerves, there was ſcarcely a parliament through his whole reign which paſſed without an act to that purpoſe)

which ſo much depended, was to be held up in all its ſplendor to the eyes of our own and foreign nations. Hence the height of prerogative in ELIZABETH's days, the ſubmiſſion of parliaments, and, I may almoſt ſay, the proſtration of the people.

AND when this magnanimous princeſs, as well by her vaſt ſpirit and perſonal virtues, as the conſtant ſucceſſes of her long reign, had derived the higheſt dignity and authority on the *Engliſh* ſceptre, it paſſed into the hands of the elder JAMES; who brought ſomething more with him than a good will, the acceſſion of a great kingdom, and the opinion of deep wiſdom, to enable him to wield it.

WHAT followed in his and the ſucceeding reigns, I need not be at the pains to recount to you. Theſe things are too recent for me to dwell upon; and you, my lord commiſſioner, do not

by the terror of his prerogative as to fill his coffers, that he executed the penal laws with ſo mercileſs a rigour on the very greateſt of his ſubjects.

STILL further to prevent the poſſibility of a return, in any future period, of the patrician power, this politic prince provided with great care for the encouragement of trade, and the diſtribution of property. Both which ends were effected at once by that famous act, which was made to ſecure and facilitate the alienation of eſtates by fine and proclamation.

ALL theſe meaſures, we ſee, were evidently taken by the king to diminiſh the credit and ſuppreſs the influence of his nobles; and of conſequence, as he thought, to exalt the power of the crown above control, if not in his own, yet in ſucceeding ages. And his policy had this effect for ſome time; though in the end

UNDER theſe circumſtances, HENRY found it no difficulty to depreſs his great lords; and he did it ſo effectually, that his ſon had little elſe left him to do, but to keep them down in that weak and diſabled ſtate, to which his father had reduced them. 'Tis true, both he and his ſucceſſors went further. They never thought themſelves ſecure enough from the reſiſtance of their old enemies, the barons [l]; and ſo continued, by every method of artifice and rapine, to ſink them much lower than even the ſafety of their own ſtate required. But the effects of this management did not appear till long afterwards. For the preſent, the crown received a manifeſt advantage by this conduct.

[l] And yet Lord BACON tells us, that when HEN. VIII. came to the crown, "There was no ſuch thing as any great and mighty ſubject, who might any way eclipſe or overſhade the imperial power." Works, vol. iii. p. 508.

hardly any thought of it could be entertained againſt him. The commons, who had hitherto been unuſed to treat with their kings but by the mediation of the great lords, being now puſhed into the preſence, were half diſcountenanced in the eye of majeſty; and durſt ſcarcely look up to the throne, much leſs diſpute the prerogatives with which ſo awful a prince was thought to be inveſted.

And when the glaring abuſe of his power, as in the exaltation of that great inſtrument of his tyranny, Wolsey, ſeemed afterwards to provoke the people to ſome more vigorous reſolutions, a ſingular event happened, which not only preſerved his greatneſs, but brought a further increaſe to it. This was the famous rupture with the court of *Rome*: in conſequence of which, the yoke of papal uſurpations, that yoke under which

underneath many paſſions, but above fear." Disc. Part II. p. 120.

our

only remember them perfectly, but have yourſelf acted a great part in moſt of them. Allow me only to ſay, that from this brief hiſtory of the regal authority, and the means by which it arrived at ſo unuſual a greatneſs, it is no wonder that the STUART family were ſomewhat dazzled by the height to which they were raiſed, and that more than half a century was required to correct, if it ever did correct, the high but falſe notions they had entertained of the imperial dignity.

SIR J. MAYNARD.

IF you permit me, at laſt, to break in at the opening which this concluſion of your diſcourſe ſeems to give me; I would ſay, That, on your principles, the houſe of STUART had great reaſon for the high notions you aſcribe to them. For what other concluſion could they make, but that a power, which had domineered for ſo long a time, and that by the full allowance of parliament and people, was, both

both in fact and right, abſolute and uncontrolable?

BP. BURNET.

IT is certain, the STUART family did draw that concluſion. But a great deal too haſtily; as may appear from your own obſervation, that the exerciſe of this extraordinary power was committed, or more properly indulged to them, by the people. This is ſo ſtrictly true, that from the firſt to the laſt of the TUDOR line, imperious and deſpotic as they were of their own nature, no extraordinary ſtretch of power was ventured upon by any of them, but under the countenance and protection of an act of parliament. Hence it was, that the STAR-CHAMBER, though the juriſdiction of this court had the authority of the common law, was confirmed by ſtatute; that the proceedings of EMPSON and DUDLEY had the ſanction of parliament; that HENRY the VIIIth's ſupremacy, and all acts of power dependent upon it, had the ſame foundation:

prove and animate the zeal of good men) brought at length by her to its final eſtabliſhment. The intolerable abuſes and ſhameleſs corruptions of popery were now ſo notorious to all the world, and the ſpirit of reformation, which had been ſecretly working ſince the days of WICKLIFF, had now ſpread itſelf ſo generally through the nation, that nothing but an entire renunciation of the doctrine and diſcipline of the church of *Rome* could be expected. And, by the happieſt providence, the queen was as much obliged by the intereſt of her government and the ſecurity of her title, as by her own unſhaken principles, to concur with the diſpoſitions of her ſubjects.

THUS, in the end, Proteſtantiſm prevailed, and obtained a legal and fixed ſettlement. But to maintain it, when made, againſt the combined powers that threatened its deſtruction, the crown on which

own policy. A king that could obtain of his parliament to have his proclamations paſs for laws [o], might have ventured on this ſtep without the concurrence of parliament.

BP. BURNET.

I ACKNOWLEDGE the act you glance at was of an extraordinary kind; and might ſeem, by implication at leaſt, to deliver up the entire legiſlative authority into the hands of the ſovereign. But there is a wide difference between the crown's uſurping this ſtrange power, and the parliament's beſtowing it. The caſe was (and nothing could be more fortunate for the nation) that at the time when the people were leaſt able to controul their prince, their prince's affairs conſtrained him to court his people. For the rejection of the papal power and the reformation of religion were things of that

[o] This terrible act is 31 HEN. VIII. c. 8. It was repealed in 1 EDW. VI. c. 12.

high

only remember them perfectly, but have yourſelf acted a great part in moſt of them. Allow me only to ſay, that from this brief hiſtory of the regal authority, and the means by which it arrived at ſo unuſual a greatneſs, it is no wonder that the STUART family were ſomewhat dazzled by the height to which they were raiſed, and that more than half a century was required to correct, if it ever did correct, the high but falſe notions they had entertained of the imperial dignity.

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tion: in a word, that every thing, which wore the face of an abſolute authority in the king, was not in virtue of any ſuppoſed inherent prerogative in the crown, but the ſpecial grant of the ſubject. No doubt, this compliance, and particularly if we conſider the lengths to which it was carried, may be brought to prove the obſequious and even abject diſpoſitions of the times; though we allow a great deal, as I think we ſhould, to prudence and good policy. But then the parliaments, by taking care to make every addition to the crown their OWN PROPER ACT, left their kings no pretence to conſider themſelves as abſolute and independent.

MR. SOMERS.

I DOUBT, conſidering the ſlaviſh diſpoſition of the times, that, if the people ſtill poſſeſſed a ſhew of liberty, this advantage was owing to the pure condeſcenſion of the crown, and not to their own

high nature, and ſo full of hazard, that no expedient was to be overlooked, which tended to make the execution of theſe projects ſafe or eaſy. Hence it was, that no ſteps were taken by the crown but with the conſent and approbation of the two houſes. And if theſe were compelled by the circumſtances of their ſituation to favour their prince's intereſt or caprice by abſurd and inconſiſtent compliances, this benefit at leaſt they drew to themſelves, that their power by that means would appear the greater and more unqueſtionable. For what indeed could diſplay the omnipotency of parliaments more than their being called in to make and unmake the meaſures of government, and give a ſanction, as it were, to contradictions? Of which there cannot be a ſtronger inſtance than the changes they made from time to time, as HENRY VIII's paſſions ſwayed him, in the rule of ſucceſſion.

THUS

memory of his former ſubjection, or ſervitude rather, to the imperious church of *Scotland*. But this was not all. Succeeding to ſo fair a patrimony as that of a mighty kingdom, where little or no oppoſition had been made for ſome reigns to the will of the ſovereign; to a kingdom too, ſecurely ſettled in the poſſeſſion of its favoured religion, which had occaſioned all the dangers, and produced all the condeſcenſion, of the preceding princes; bringing, beſides, with him to the ſucceſſion, an undiſputed title and the additional ſplendor of another crown; all theſe advantages meeting in his perſon at that point of time, he ventured to give way to his natural love of dominion, and told the people to their face, that the pretended rights of their parliaments were but the free gifts and graces of their kings: that every high point of government, that is, every point which he choſe to call by that name, was wrapt up in the awful myſtery of his prerogative:

THUS we ſee that, through the entire reigns of the houſe of TUDOR, that is, the moſt deſpotic and arbitrary of our princes, the forms of liberty were ſtill kept up, and the conſtitution maintained, even amidſt the advantages of all ſorts which offered for the deſtruction of both. The parliament indeed was obſequious, was ſervile, was directed, if you will; but every proceeding was authoriſed and confirmed by parliament. The king in the mean time found himſelf at his eaſe; perhaps believed himſelf abſolute, and conſidered his application to parliaments as an act of mere grace and popular condeſcenſion. At leaſt, after ſo long experience of their ſubmiſſion, the elder JAMES certainly thought himſelf at liberty to entertain this belief of them. But he was the firſt of our princes that durſt avow this belief plainly and openly. He was ſtimulated, no doubt, to this uſurpation of power in *England*, by the memory

the commons were riſing apace; and in a century had grown to that height, that on the acceſſion of the *Scotch* family, the point of time when the new king dreamed of nothing but abſolute ſovereignty [q], they were now in a condition to aſſert the public liberty, and, as the event ſhewed but too ſoon, to ſnatch the ſceptre itſelf out of their king's hands.

However, in that interval of the dormant power of the commons it was, that the prerogative made the largeſt ſhoots, till in the end it threatened to overſhadow law and liberty. And, though the general reaſon is to be ſought in the humiliation of the church, the low eſtate of the barons, and the unexerted, becauſe as yet unfelt, greatneſs of the commons, the ſolution will be defective if

[q] It was ſaid well of this king—"That he ſpake peace abroad, and ſung lullaby at home: yet, like a dead calm in a hot ſpring, treaſured up in ſtore ſad diſtempers againſt a back-winter." Nat. Bacon.

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gative: and, in a word, that "it was ſedition for them to diſpute what a king may do in the height of his power [*p*]."

SUCH, you know, was the language, the public language to his parliaments, of JAMES THE FIRST. But theſe pretences, which might have been ſuffered perhaps, or could not have been oppoſed, under the TUDOR line, were unluckily out of ſeaſon, and would not paſs on a people who knew their own rights, had ſaved to themſelves the exerciſe of them, and came now at length to feel and underſtand their importance. For, as I before obſerved, the principal cauſe that had lifted the crown ſo high, was the depreſſion of the barons. The great property which had made them ſo formidable, was diſperſed into other hands. The nobility were therefore too low to give any umbrage to the crown. But

[*p*] Speech to the lords and commons at *Whitehall*. An. 1609.

the

poſe the people to look up with reverence to a crown, which preſented nothing to their view but what was fitted to take their admiration, or imprint eſteem. Yet all theſe had failed of procuring to majeſty that profound ſubmiſſion which was paid to it, or of elevating the prince to that high conceit of independency which ſo thoroughly poſſeſſed the imagination of King JAMES, if an event of a very ſingular nature, and big with important conſequences, had not given the proper occaſion to both.

SIR J. MAYNARD.

I UNDERSTAND you to mean the overthrow of the papal dominion, which had ſo long eclipſed the majeſty of our kings; and held them in a ſtate of vaſſalage, not only to the triple crown, but, which was more diſgraceful, to the mitre of their own ſubjects.

we ſtop here. For the regal authority, ſo limited by the antient conſtitution, and by the continued uſe of parliaments, could never in this ſhort ſpace have advanced itſelf beyond all bounds, if other reaſons had not co-operated with the ſtate of the people; if ſome more powerful and ſpecial cauſes had not conſpired to throw round the perſon of the ſovereign thoſe rays of ſacred opinion, which are the real ſtrength as well as gilding of a crown.

Of theſe I have occaſionally mentioned ſeveral; ſuch as "the perſonal character and virtues of the princes themſelves; the high adventurous deſigns in which they were engaged; the intereſt, the people found or promiſed to themſelves in ſupporting their power; the conſtant ſucceſſors of their adminiſtration; and the unremitting ſpirit and vigour with which it was carried on and maintained." All theſe conſiderations could not but diſ-

count the ſeveral branches of this uſurped authority. It is enough to ſay, that it was tranſcendant in all reſpects that could in any ſenſe be taken to concern religion. And who, that has looked into the papal ſtory, needs be told that, by a latitude of interpretation, every thing was conſtrued to be a religious concern, by which the pope's power or intereſt could be affected?

UNDER the acknowledgment then of this ſuper-eminent dominion, no ſteps could poſſibly be taken towards the reformation of religion, or even the aſſertion of the juſt rights and privileges of the crown. But the people were grown to have as great a zeal for the former of theſe conſiderations, as the king for the latter. And in this juncture it was, that HENRY, in a ſudden heat, threw off the ſupremacy; which the parliament, to prevent its return to the pope, very readily inveſted in the king.

THERE

BP. BURNET.

RATHER underſtand me to mean, what was indeed the conſequence of that event, THE TRANSLATION OF THE POPE'S SUPREMACY TO THE KING. This, as I take it, was the circumſtance of all others which moſt favoured the ſudden growth of the imperial power in this nation. And, becauſe I do not remember to have ſeen it enlarged upon as it deſerves, give me leave to open to you, ſomewhat copiouſly, the nature of this newly-acquired headſhip, and the numerous advantages which the prerogative received from it.

THE PAPAL SUPREMACY, as it had been claimed and exerciſed in this kingdom, was a power of the higheſt nature. It controlled every rank and order in the ſtate, and, in effect, laid the prince and people together at the mercy of the *Roman* pontif. There is no need to re-

the ſpiritual juriſdiction, as united to the civil, in the king's perſon. Yet, in virtue of theſe clauſes, the regal ſupremacy was, in fact, reſtrained and limited by act of parliament: and the import of them was clearly to aſſert the independency of the crown on any foreign judicature, and not to confer it in the extent in which it was claimed and exerciſed by the ſee of *Rome*.

BP. BURNET.

IT is true, that no more was expreſſed, or perhaps intended, in this act. But the queſtion is, how the matter was underſtood by the people at large, and in particular by the king himſelf and his flatterers. Now it ſeems to me that this transfer of the ſupremacy would be taken for a ſolemn acknowledgment, not only of the antient encroachments and uſurpations of the papacy, but of the king's right to ſucceed to all the powers of it. And I conclude this from the nature of the thing itſelf, from the current notions

THERE was ſomething ſo daring, and, according to the prejudices of that time, ſo preſumptuous and even prophane, in this attempt to transfer the ſpiritual headſhip to a ſecular power, that the pope himſelf little apprehended, and nothing but the king's dauntleſs temper could have aſſured, the ſucceſs of it. The repugnancy which the parliament themſelves found in their own notions betwixt the exerciſe of the ſpiritual and temporal power, was the reaſon perhaps for inſerting in the act of ſupremacy thoſe qualifying clauſes, we find in it [r].

MR. SOMERS.

It is poſſible, as you ſay, that the parliament might be at a loſs to adjuſt in their own minds the preciſe bounds of

[r] Meaning ſuch clauſes as theſe—*as by any ſpiritual or eccleſiaſtical power or authority may* LAWFULLY *be exerciſed*, and, *provided that nothing be done contrary to the* LAWS *of this realm.*

to it. And thus, though the act was ſo properly drawn as to make a difference in the two caſes, yet the people at large, and much more the king himſelf, would infer from the conceſſion, "that the pope had uſurped his powers on the crown;" that therefore the crown had now a right to thoſe powers. And the circumſtance of this tranſlation's paſſing by act of parliament, does not alter the matter much, with regard to the king's notion of it. For in that time of danger, and for the greater ſecurity of his new power, he would chuſe to have that ratified and confirmed by ſtatute, which he firmly believed inherent in his perſon and dignity.

THEN, to ſee how far the current opinons of that time were favourable to the extenſion of the regal authority, on this alliance with the papal, we are to reflect, that, however odious the adminiſtration of the pope's ſupremacy was become,

notions of the time, and from the ſequel of the king's government.

If we attend to the nature of the complaints which the kingdom was perpetually making, in the days of popery, of the *Roman* uſurpations, we ſhall find that they did not ſo much reſpect theſe uſurpations themſelves, as the perſon claiming and enjoying them. The grievance was, that appeals ſhould be made to *Rome*; that proviſions ſhould come from thence; in a word, that all cauſes ſhould be carried to a foreign tribunal, and that ſuch powers ſhould be exerciſed over the ſubjects of this realm by a foreign juriſdiction. The complaint was, that the pope exerciſed theſe powers; and not that the powers themſelves were exerciſed. So, on the abolition of this ſupremacy, the act that placed it in the perſon of the king, would naturally be taken to tranſfer upon him all the privileges and preeminencies, which had formerly belonged

it is eaſy to ſee how well prepared the minds of men were, to allow him the exerciſe of any authority to which he pretended.

AND to what degree this ſpiritual character of head of the church operated in the minds of the people, we may underſtand from the language of men in ſtill later times, and even from the articles of our church, where the prerogative of the crown is ſaid to be that which GODLY KINGS have always exerciſed: intimating that this plenitude of power was inherent in the king, on account of that *ſpiritual and religious* character, with which, as head of the church, he was neceſſarily inveſted. The illuſion, as groſs as we may now think it, was but the ſame as that which blinded the eyes of the greateſt and wiſeſt peope in the old world. For was it not juſt in the ſame manner, that by the policy of the *Roman* emperors in aſſuming the office of *pontifex*

come, moſt men had very high notions of the plenitude of his power, and the ſacredneſs of his perſon. "CHRIST's vicar upon earth" was an awful title, and had ſunk deep into the aſtoniſhed minds of the people. And though HENRY's pretenſions went no further than to aſſume that vicarial authority within his own kingdom, yet this limitation would not hinder them from conceiving of him, much in the ſame way as of the pope himſelf. They, perhaps, had ſeen no difference, but for his want of the pope's *ſacerdotal* capacity. Yet even this defect was, in ſome meaſure [*s*], made up to him by his *regal*. So that between the majeſty of the kingly character, and the conſecration of his perſon by this myſterious endowment of the ſpiritual,

[*s*] The biſhop does well to ſay—*in ſome meaſure*. For, according to popiſh prejudices, the ſacerdotal character is vaſtly above the regal. See POLE's addreſs to HEN. VIII. l. 1. where this high point is diſcuſſed at large.

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in what light the king regarded their compliance with him.

MR. SOMERS.

IT is very likely, for theſe reaſons, that the king would draw to himſelf much authority and reverence, at leaſt, from his new title of ſupremacy. But it does not, I think, appear that the ſupremacy had all that effect on the people's rights and the antient conſtitution, which your lordſhip's argument requires you to aſcribe to it.

BP. BURNET.

I BROUGHT theſe general conſiderations only to ſhew the reverend opinion which of courſe would be entertained of this mixt perſon, THE SUPREME HEAD OF THE CHURCH, compounded of a king and a pope; and how natural a foundation it was for the ſuperſtructure of deſpotic power in all its branches. But I now haſten to the particulars which demonſtrate

tifex maximus, that is, incorporating the religious with their civil character, not only their authority became the more awful, but their *perſons* ſacred?

WE ſee then, as I ſaid, how conveniently the minds of men were prepared to acquieſce in HENRY's uſurped prerogative. And it is well known that this prince was not of a temper to balk their expectations. The ſequel of his reign ſhews that he took himſelf to be inveſted with the whole eccleſiaſtical power, legiſlative as well as executive; nay, that he was willing to extend his acknowledged right of ſupremacy even to the antient papal infallibility, as appears from his ſovereign deciſions in all matters of faith and doctrine. It is true the parliament was ready enough to go before, or at leaſt to follow, the head of the church in all theſe deciſions. But the reaſon is obvious. And I need not repeat to you

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with his authority in ſpiritual. And, fortunately for the advancement of his prerogative, there was already erected within the kingdom another court of the like dangerous nature, of antient date, and venerable eſtimation, under the name of the court of STAR-CHAMBER; which brought every thing under the direction of the crown that could not ſo properly be determined in the high-commiſſion. Theſe were the two arms of abſolute dominion; which, at different times, and under different pretences, were ſtretched forth to the oppreſſion of every man that preſumed to oppoſe himſelf to the royal will or pleaſure. The ſtar-chamber had been kept, in former times, within ſome tolerable bounds; but the high and arbitrary proceedings of the other court, which were found convenient for the further purpoſe of reformation, and were thereſore conſtantly exerciſed, and as conſtantly connived at by the parliament, gave an eaſy pretence for ad-

monſtrate that this uſe was actually made of that title.

And, firſt, let me obſerve, that it gave birth to that great and formidable court of the HIGH-COMMISSION; which brought ſo mighty an acceſſion of power to the crown, that, as experience afterwards ſhewed, no ſecurity could be had for the people's liberties, till it was totally aboliſhed. The neceſſity of the times was a good plea for the firſt inſtitution of ſo dangerous a tribunal. The reſtleſs endeavours of papiſts and puritans againſt the eccleſiaſtical eſtabliſhment gave a colour for the continuance of it. But, as all matters that regarded religion or conſcience were ſubjected to its ſole cognizance and inſpection, it was preſently ſeen how wide an entrance it gave to the moſt tyrannical uſurpations.

It was, further, natural that the King's power in civil cauſes ſhould keep pace

its free courſe under the ſanction of theſe two ſupreme courts, to which the cognizance of all great matters was committed.

THIS, one would think, were ſufficient to ſatisfy the ambition of our kings. But they went further, and ſtill under the wing of their beloved ſupremacy.

THE parliament were not ſo tame, or the king's grace did not require it of them, to diveſt themſelves entirely, though it was much checked and reſtrained by theſe courts, of their legiſlative capacity. But the crown found a way to eaſe itſelf of this curb, if at any time it ſhould prove troubleſome to it. This was by means of the DISPENSING POWER; which, in effect, vacated all laws at once, further than it pleaſed the king to countenance and allow them. And for ſo enormous a ſtretch of power (which, being rarely exerciſed, was the leſs minded) there was a ready pretence from

vancing the ſtar-chamber's juriſdiction ſo far, that in the end its tyranny was equally intolerable as that of the high-commiſſion.

THUS the king's authority in all caſes, ſpiritual and temporal, was fully eſtabliſhed, and in the higheſt ſenſe of which the words are capable. Our kings themſelves ſo underſtood it; and when afterwards their parliaments ſhewed a diſpoſition to interfere in any thing relating either to church or ſtate, they were preſently reprimanded; and ſternly required not to meddle with what concerned their prerogative royal and their high points of government. Inſtances of this ſort were very frequent in ELIZABETH's reign, when the commons were getting up, and the ſpirit of liberty began to exert itſelf in that aſſembly. The meaning of all this myſterious language was, that the royal pleaſure was ſubject to no control, but was to be left to take

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for HENRY III. learned this leſſon of tyranny, and put it in practice. On which occaſion one of his upright judges could not help exclaiming, CIVILIS CURIA EXEMPLO ECCLESIASTICÆ CONQUINATUR [x]. And afterwards, we know, HENRY VII. claimed and exerciſed this diſpenſing power in the caſe of ſheriffs, contrary to act of parliament [y]. It was early indeed in his reign, and when

[x] The name of this reverend judge was ROGER DE THURKEBY. A cauſe was trying before him in *Weſtminſter-hall*, when one of the parties produced the king's letters patent with a *non-obſtante* in it. "Quod cum comperiſſet, ſays the hiſtorian, ab alto ducens ſuſpiria, de prædictæ adjectionis appoſitione, dixit; Heu, heu, hos ut quid dies expectavimus? ecce jam civilis curia exemplo eccleſiaſticæ conquinatur, et a ſulphureo fonte rivulus intoxicatur." p. 784. HEN. III.

[y] Many ſtatutes, and eſpecially 23 HEN. VI. had forbidden the continuance of any perſon in the office of ſheriff for more than one year. HENRY VII. diſpenſed with theſe ſtatutes. And the twelve judges reſolved in 2 HEN. VII. that, by a *non-obſtante*, a patent for a longer time ſhould be good. —It ſeems, the good old race of the THURKEBYS was now worn out.

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from the papal privileges and pre-eminencies to which the crown had ſucceeded. For this moſt invidious of all the claims of prerogative had been indiſputable in the church; and it had been nibbled at by ſome of our kings, in former times, from the contagious authority of the pope's example, even without the pretence which the ſupremacy in ſpirituals now gave for it.

THE exerciſe of this power, in the popes themſelves, was thought ſo monſtrous, that MATTHEW PARIS honeſtly complains of it in his time, as *extinguiſhing all juſtice* — EXTINGUIT OMNEM JUSTICIAM [*t*]. And on another occaſion, I remember, he goes ſo far, in a ſpirit of prophecy, almoſt, as to tell us the ill uſe that hereafter kings themſelves might be tempted to make of it [*u*]. His prediction was verified very ſoon:

[*t*] HIST. ANG. p. 694.

[*u*] Something to this purpoſe occurs in p. 706.

he, in the pope's bulls, to put in ſuch kind of clauſes; and therefore ſhe would omit no power in that caſe to which the pope had pretended [z]."

AND it is in this diſpenſing ſpirit that JAMES I, having delivered it for a maxim of ſtate, "that the king is above law," goes on to affirm, in one of his favourite works, that general laws, made publickly in parliament, may, upon known reſpects to the king, by his authority be mitigated and SUSPENDED upon cauſes only known to him [a].

WE perceive the ground of that claim, which was carried ſo high by the princes of the houſe of STUART, and, as we have juſt ſeen, brought on the ruin of the laſt of them. And to how great a degree this prerogative of the diſpenſing

[z] See his Works, vol. iii. p. 806.

[a] *The true law of free monarchies*, in the King's Works, p. 203.

power

the ſtate of his affairs was thought to give a colour to it.

I MENTION theſe things to ſhew, that ſince the pope's example had been ſo infectious in former times, it would now be followed very reſolutely, when the tranſlation of the very ſupremacy, from which it had ſprung, ſeemed to juſtify it. And we have a remarkable inſtance in ELIZABETH's reign, by which it may appear that this prerogative was publickly and ſolemnly avowed. For upon ſome ſcandal taken by the popiſh party upon pretence that the book of conſecration of biſhops was not eſtabliſhed by law, the queen made no ſcruple to declare by her letters-patent, that ſhe had, by her ſupreme authority, diſpenſed with all cauſes or doubts of any imperfection or diſability in the perſons of the biſhops. My learned friend, Dr. STILLINGFLEET, in commenting this caſe, acknowledges the very truth. "It was cuſtomary, ſays

with the goſpel itſelf [*b*], as well as the ſtatute-book.

MR. SOMERS.

I MUST needs think, Sir JOHN, you are a little ſevere, not to ſay unjuſt, in this inſinuation; for which the churchmen of our days have ſurely given you no reaſon. And as for the reverend judges, methinks my lord of *Saliſbury* might be allowed to expoſe their determination, at the ſame time that he ſo candidly accounts for it.

BP. BURNET.

I PERCEIVE, my lord commiſſioner, with all his goodneſs and moderation, is a little apt to furmiſe the worſt of our order. But I will try to reconcile him to it; and it ſhall be in the way he moſt likes, by making a frank confeſſion of our infirmities.

[*b*] Alluding to the doctrine of the canoniſts, who ſay, *Papa diſpenſare poteſt de omnibus præceptis* VETERIS ET NOVI TESTAMENTI. See *biſhop* JEWELL's *defence of his apology of the church of England, againſt* HARDING, p. 313.

FOR

power had at length poſſeſſed the minds even of the common lawyers, (partly from ſome ſcattered examples of it in former times, and partly from reaſons of expediency in certain junctures, but principally from the inveteracy of this notion of the papal ſupremacy) we had an alarming proof in HALE's caſe, when eleven out of the twelve judges declared for it.

SIR J. MAYNARD.

YOUR lordſhip has indeed ſhewn that the poiſon of the papal ſupremacy began to work very fatally. If this bleſſed revolution had not happened, what could have been expected but that the next ſtep would be, to ſet the crown above all divine as well as human law? And, methinks, after ſuch a judgment in *Weſtminſter-Hall*, it could not be ſurpriſing if another ſet of men had ſerved the king, in the office of the pope's janiſſaries, and maintained his right of diſpenſing

there is the leſs need, if I were ever ſo tender of their reputation, as their inducements to preach up this doctrine were neither ſlight in themſelves, nor unfriendly to the public intereſt.

It cannot be doubted that the churchmen eſpecially, both by intereſt and principle, would be cloſely connected with the new head of the church. Their former ſubjection in ſpirituals to the papal authority would of itſelf create a prejudice in favour of it, as now reſiding in the king's perſon. And the diſpoſal of biſhopricks and other great preferments being now entirely in the crown, they would of courſe, you will ſay, be much addicted to his ſervice.

But theſe were not the ſole, or even the principal, reaſons that induced ſo wiſe and ſo diſintereſted perſons, as our firſt reformers, to exalt the royal prerogative. They were led into this pernicious prac-

FOR another ſource of the regal dominion in latter times, and ſtill ſpringing from out of the rock of ſupremacy (which followed and ſuccoured the court-prerogative, wherever it went, juſt as the rock of MOSES, the *Rabbins* ſay, journeyed with the *Jewiſh* camp, and refreſhed it in all its ſtations) was the opinion taken up and propagated by churchmen, from the earlieſt æra of the Reformation, concerning the irreſiſtible power of kings, and the PASSIVE OBEDIENCE that is due to it.

SIR J. MAYNARD.

AYE, there it is, I am afraid, that we are principally to look for the origin of the high pretences of our kings to abſolute government.

BP. BURNET.

I SHALL diſſemble no part of the clergy's blame on this occaſion; and

preſentatives, as to allow that they had any pretenſion to reſtrain their ſovereign.

SIR J. MAYNARD.

I could ſwear to the truth of this account. One of the popes, I forget which, is ſaid to have called the deputies of the third eſtate in *France*, on a certain occaſion, NEBULONES EX FÆCE PLEBIS [c]. And though that might not be the language of churchmen in *England*, at this time, it was not far, perhaps, from expreſſing their ſentiments. It is certain, they ſoon taught their princes, who put themſelves to ſchool to the hierarchy [d], to talk in this ſtrain; as appears from many

[c] See this particular taken notice of in K. JAMES's Works, p. 384.

[d] One of them, King JAMES, profited ſo well by this diſcipline, that, as we are told on very competent authority, "He was the moſt able prince that ever this kingdom had, to JUDGE OF CHURCH-WORK." *Ded. of Bp.* ANDREWS's *ſermons to* CHARLES I. *by the biſhops* LAUD *and* BUCKERIDGE.

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tice by the moſt excuſable of all motives, in their ſituation, an immoderate zeal againſt popery.

It is true, a very natural prejudice mixed itſelf with their other reaſonings. "The crown had been declared ſupreme, and to have chief government of all eſtates of this realm, and in all cauſes." And, though this declaration was levelled only againſt the pretenſions of every foreign, and particularly the papal power, yet, the clergy were given to conceive of it as a general propoſition. The reaſon was, that the people, from whom the juſt right of ſupremacy is derived, having, at this juncture, not yet attained the conſideration, which the nobles had loſt, they forwardly concluded, that if the royal eſtate were independent of the pope, it was unqueſtionably ſo of every other power. They could not, on the ſudden, be brought to think ſo reverendly of the poor people, even in their repreſentatives,

right of this aſſumed headſhip, the crown went ſo far as to reject the authority of the church as well as court of *Rome*, all the thunders of the Vatican were employed againſt this invader of the church's prerogative. The pope, in his extreme indignation, threatened to depoſe EDWARD. He did put this threat in execution againſt ELIZABETH. Yet, in ſpite of religious prejudices, this was eſteemed ſo monſtrous a ſtretch of power, and ſo odious to all Chriſtian princes, that the jeſuits thought it expedient, by all means, to ſoften the appearance of it. One of their contrivances was, by ſearching into the origin of civil power; which they brought rightly, though for this wicked purpoſe, from the people. For they concluded, that, if the regal power could be ſhewn to have no divine right, but to be of human and even popular inſtitution, the liberty, which the pope took in depoſing kings, would be leſs invidious. Thus the jeſuits reaſoned on the

of ELIZABETH's and JAMES's ſpeeches to the commons.

BP. BURNET.

SOMETHING of this ſort, I grant you, but not in the degree you put it, might have an influence on the political reaſonings of the clergy. But their zeal for reformation was what prevailed with them moſt, and carried them furtheſt into theſe notions. It is ſomething curious to ſee how this happened.

HENRY's uſurpation of the ſupremacy, as it was called at *Rome*, appeared ſo prodigious a crime to all good Catholics, that no ſeverities were great enough to inflict upon him for it. Their writers proceeded to ſtrange lengths. Even our cardinal POLE ſo far forgot the greatneſs of his quality, and the natural mildneſs of his temper, as to exceed the bounds of decency, in his invectives againſt him. And when afterwards, in right

CHRISTIAN MAN, and the general ſtream of writings in thoſe days, became the opinion of the church, and was indeed the received Proteſtant doctrine.

AND thus unhappily aroſe in the church of *England*, that pernicious ſyſtem of divine indefeaſible right of kings: broached indeed by the clergy, but not from thoſe corrupt and temporizing views to which it has been imputed. The authority of thoſe venerable men, from whom it was derived, gave it a firm and laſting hold on the minds of the clergy: And being thought to receive a countenance from the general terms, in which obedience to the civil magiſtrate is ordained in ſcripture, it has continued to our days, and may, it is feared, ſtill continue, to perplex and miſlead the judgments of too many amongſt us.

YET it could hardly have kept its ground againſt ſo much light and evi-

dence

the matter. The argument was puſhed with great vigour by HARDING and his brethren in ELIZABETH's reign, but afterwards with more learning and addreſs by BELLARMINE, MARIANA, and others [*e*].

To combat this dangerous poſition, ſo prejudicial to the power of kings, and which was meant to juſtify all attempts of violence on the lives of heretical princes, the Proteſtant divines went into the other extreme; and, to ſave the perſon of their ſovereign, preached up the doctrine of DIVINE RIGHT. HOOKER, ſuperior to every prejudice, followed the truth. But the reſt of our reforming and reformed divines ſtuck to the other opinion; which, as appears from the HOMILIES, the INSTITUTION OF A

[*e*] This notion was ſtarted even ſo early as HENRY's rejection of the ſupremacy. Cardinal POLE inſiſts ſtrongly on this origin of kingſhip in his book, *Pro eccleſiaſticæ unitatis defenſione*, lib. i. p. 74.

CHRISTIAN

THIS I take to be the true account of what the friends of liberty ſo often object to us, "That the deſpotiſm of our "later princes has been owing to the "ſlaviſh doctrines of the clergy." The charge, ſo far as there is any colour for it, is not denied: and yet I ſhould hope to ſee it urged againſt us with leſs acrimony, if it were once underſtood on what grounds theſe doctrines were taken up, and for what purpoſes they were maintained by the clergy.

MR. SOMERS.

BESIDES the candour of this acknowledgment, the part, which our clergy have lately acted, is, methinks, enough to abate and correct thoſe hard ſentiments, which, as you ſay, have been entertained againſt them.

SIR J. MAYNARD.

THIS apology ſeems indeed the beſt that can be made for them. But when one

dence as has been thrown at different times on this ſubject [f], but for an unlucky circumſtance attending the days of reformation. This was, the growth of puritaniſm and the republican ſpirit; which, in order to juſtify its attack on the legal conſtitutional rights of the crown, adopted the very ſame principles with the jeſuited party. And under theſe circumſtances it is not to be thought ſtrange that a principle, however true, which was diſgraced by coming through ſuch hands, ſhould be generally condemned and execrated. The crown and mitre had reaſon to look upon both theſe ſorts of men as their mortal enemies. What wonder then they ſhould unite in reprobating the political tenets, on which their common enmity was juſtified and ſupported?

[f] In the writings, publiſhed by political men for twenty years together before the Reſtoration; in which the great queſtion of the origin of civil government was thoroughly canvaſſed.

SIR J. MAYNARD.

By their behaviour in a late critical conjuncture: and yet, to ſpeak my mind frankly, the merit of their ſervices, even on that occaſion, is a little equivocal, when one reflects how unwilling they ſeemed to take the alarm, till they were rouſed, at length, by their own immediate object, the church's danger?

BP. BURNET.

And can you wonder that what concerned them moſt, what they beſt underſtood, and was their proper and peculiar charge, ſhould engage their principal attention? Beſides, they went on principle, and with reaſon too, in ſuppoſing that no ſlight or partial breaches of law were ſufficient to authorize reſiſtance to the magiſtrate [g]. But when a general attack

[g] The biſhop declares his opinion to this purpoſe very fully in ſeveral places of the Hiſtory of his Own Times. His and his friend Tillotson's repreſentations

one conſiders the baleful tendency of thoſe doctrines, which were calculated to enſlave the very ſouls and conſciences of men, and by advancing princes into the rank of gods, to abet and juſtify their tyranny, one cannot help feeling a ſtrong reſentment againſt the teachers of them, however they might themſelves be impoſed upon by ſeveral colourable pretences. Your lordſhip knows, I might proceed to further and ſtill harder reflexions. But I have no pretence to indulge in them at this time, when a biſhop is pleading ſo warmly in the cauſe of liberty.

BP. BURNET.

THIS tenderneſs to your friends, Sir JOHN, is very obliging. But I would willingly engage your candour, in behalf of our order. Let me preſume, for ſuch a purpoſe, to ſecond Mr. SOMERS's obſervation, "That the *Engliſh* clergy have at "length atoned, in ſome meaſure, for "former miſcarriages."

"transferred ſupremacy." There is ſtill another inſtance behind, which ſhews how well our princes underſtood the advantage they had gained, and how dextrouſly they improved it.

It ſeems prodigious, at firſt ſight, that when the yoke of *Rome* was thrown off, the new church, erected in oppoſition to it, ſhould ſtill continue to be governed by the laws of the old. The pretence was, that this was only by way of interim, till a body of eccleſiaſtical laws could be formed; and, to cover this pretence the better, ſome ſteps were, in fact, taken towards the execution of ſuch a deſign. But the meaning of the crown certainly was, to uphold its darling ſupremacy, even on the old footing of the CANON LAWS.

This concluſion ſeems probable, if one conſiders that thoſe canons proceeded from an abſolute ſpiritual monarch, and had

tack was made upon it; and the diſpenſing power was ſet up in defiance of all law, and to manifeſt the ſubverſion of the conſtitution, the clergy were then as forward as any others to ſignalize themſelves in the common cauſe of liberty.

SIR J. MAYNARD.

THEIR old favourite doctrine of *non-reſiſtance* was, I doubt, at the bottom of this cautious proceeding. But it was high time for them to lay it aſide, when they ſaw it employed as the ready way for the introduction of that popery, which, as you ſay, it was its firſt intention to keep out.

BP. BURNET.

IT certainly was.—But, not to purſue this argument any further, let me return to the main point I had in view, which was, "to account for the growth of the "regal power from the influence of the

preſentations to the unhappy Lord RUSSELL, no doubt, turned upon this principle.

would be for aſſuming a ſhare in their darling ſupremacy itſelf.

WITH thoſe canon laws, and for the ſame purpoſe, as was obſerved to us, theſe princes retained a great affection for the interpreters of them, the canon and civil lawyers; till the genius of liberty riſing and prevailing in the end, over all the attempts of civil deſpotiſm, both the one and the other fell into gradual deſuetude and contempt: and as the canoniſts were little regarded, ſo their law is now conſidered no further than as it is countenanced and ſupported by the law of *England*.

BUT to ſee how convenient the doctrine of the canon law was for the maintenance of an abſolute ſupremacy, it needs only be obſerved to you, that one of theſe canons is, "That it is not lawful for any man to diſpute of the "pope's

had a perpetual reference to his dominion; that they were formed upon the very genius, and did acknowledge the authority of the civil laws, the proper iſſue, as my lord commiſſioner has ſhewn us, of civil deſpotiſm. Whoever, I ſay, conſiders all this, will be inclined to think that the crown contrived this interim from the uſe the canon law was of to the extenſion of the prerogative. Accordingly it is certain, that the ſucceeding monarchs, ELIZABETH, JAMES, and CHARLES, would never ſuffer us to have a body of eccleſiaſtical laws, from a ſenſe of this utility in the old ones; and a conſciouſneſs, if ever they ſhould ſubmit a body of new laws to the legiſlature, that the parliament would form them altogether in the genius of a free church and ſtate [*b*]; and perhaps

[*b*] The biſhop gives the ſame account of this matter in his Hiſtory of the Reformation, Part I. p. 330.

" good will, and for good example giving " to his ſubjects [*i*]."

THUS decreed that *great ſchool-maſter of the whole land* (to give his majeſty no harder a title than he was pleaſed to give himſelf); and it is difficult to ſay whence his ſupremacy extracted this golden rule of *free monarchies*, if not from the pope's own code of imperial canons.

THUS it appears what miſconceptions aroſe, and what ſtrange concluſions were drawn, from the king's ſupremacy in ſpirituals. One might proceed further

[*i*] TRUE LAW OF FREE MONARCHIES, p. 203.—What is ſaid of the king's being the *great ſchool-maſter of the land* is taken from the ſame diſcourſe, p, 204. His words are theſe—" The people of a " borough cannot diſplace their provoſt—yea, even " the poor ſchool-maſter cannot be diſplaced by his " ſcholars—How much leſs it is lawful upon any " pretext to control or diſplace the great provoſt " and GREAT SCHOOL-MASTER OF THE WHOLE " LAND."

in

"pope's power." And to ſee how exactly our kings were diſpoſed to act upon it, one needs only recollect that immortal apophthegm of the elder JAMES, already taken notice of, "That it is ſedition for the ſub-"ject to diſpute what a king may do in "the height of his power."

AND as the canon laws are the pope's laws, ſo we are told, on the ſame ſupreme authority, that the *Engliſh* laws are the king's. For thus on another occaſion his majeſty expreſſes himſelf.—"Although a "juſt prince" (I believe I repeat his very words) "will not take the life of any "of his ſubjects without a clear law: yet "the ſame laws, whereby he taketh "them, are made by himſelf, or his pre-"deceſſors; and ſo the power flows al-"ways from himſelf."—And again, "Although a good king will frame all "his actions to be according to the law, "yet is he not bound thereto but of his

in the king's; and it is not wonderful that the people ſhould find their imaginations ſtrongly affected by this notion. And with this general preparation, it followed very naturally, that, in the ſeveral ways here recounted, the crown ſhould be diſpoſed and enabled to extend its prerogative, till another change in the government was required to limit and circumſcribe it, almoſt as great as that of the Reformation.

MR. SOMERS.

I HAVE liſtened with much pleaſure to this deduction which your lordſhip has made from that important circumſtance of the crown's ſupremacy in ſpirituals. I think it throws great light on the ſubject under conſideration, and accounts in a clear manner for that appearance of deſpotiſm which the *Engliſh* government has worn from the times of reformation. I have only one difficulty remaining with me: but it is ſuch an one

in contemplation of this ſubject; but I have wearied you too much already. You will ſee from theſe ſeveral particulars how it came to paſs that the REFORMATION, which was founded on the principles of liberty and ſupported by them, was yet for ſome time the cauſe of ſtrengthening the power of the crown. For though the exerciſe of private judgment, which was eſſential to Proteſtantiſm, could not but tend to produce right notions of civil liberty, as well as of religious faith and diſcipline, and ſo in the end was fated to bring about a juſt form of free government (as after ſome ſtruggles and commotions, we ſee, it has happened), yet the tranſlation of ſupremacy from the pope to the civil magiſtrate brought with it a mighty acceſſion of authority, which had very ſenſible effects for ſeveral reigns afterwards. The myſterious ſacredneſs and almoſt divinity which had lodged in the pope's perſon, was now inſhrined in

BP. BURNET.

I WAS not, I confeſs, aware of this objection to our theory, which is very ſpecious. Yet it may be ſufficient, as I ſuppoſe, to reply to it, that the work of reformation was carried on and eſtabliſhed by the whole legiſlature; and that the ſupremacy, in particular, though it of right belonged to the three eſtates, was by free conſent ſurrendered and given up into the hands of the king. It is certain this power, though talked of as the antient right of the crown, was ſolemnly inveſted in it by act of parliament.

SIR J. MAYNARD.

THERE may be ſomething in this. Yet your lordſhip, I think, does not carry the matter quite far enough; and, with your leave, I will preſume to give another, and perhaps the truer, anſwer to Mr. SOMERS's difficulty. The ſubject is a little

one as ſeems to bear hard on the great hypotheſis itſelf, ſo learnedly maintained by my lord commiſſioner in our late converſation, of the original free conſtitution of the *Engliſh* government. For, allowing all you ſay to be true, does not the very tranſlation of the pope's ſupremacy to the king, conſidered in itſelf, demonſtrate that we had then, at leaſt, no free conſtitution at all, to be invaded by the high claims of that prerogative? If we admit the exiſtence of any ſuch, the ſupremacy of the church ſhould, naturally, I think, have devolved upon the ſupreme civil power; which with us, according to the preſent ſuppoſition, is in the three eſtates of the legiſlature. But this devolution, it ſeems, was on the king alone; a public acknowledgment, as I take it, that the conſtitution of the government was at that time conceived to be, in the higheſt ſenſe of the word, abſolutely MONARCHICAL.

BP.

In the New Teſtament, obedience is preſſed to the perſon of Cæſar, becauſe an abſolute monarchy was the only government in being: and, for the ſame reaſon, when afterwards the empire became Chriſtian, the ſupremacy, as we know from *eccleſiaſtical ſtory*, was aſſumed by the emperor: juſt as it would have been by the conſul and ſenate, had the republic exiſted. Hence our Reformers, going altogether by ſpiritual and eccleſiaſtical example, and hoping thereby to preſerve their credit againſt the reproaches of *Rome*, which, as your lordſhip knows, was perpetually charging them with novelties and innovations in both reſpects, recurred to early antiquity for that rule.

THIS attention to eccleſiaſtical example was, I ſuppoſe, a conſideration of convenience with the wiſe fathers of our church: the other appeal to the Goſpel, might be a matter of conſcience with them.

a little nice, but I have not thoſe ſcruples which may reaſonably be conceived to reſtrain your lordſhip from enlarging upon it.

I REPLY then directly, and without ſoftening matters, that this irregular tranſlation of the ſupremacy is no proof that there was not then a FREE CONSTITUTION, with a legitimate power in it, to which the ſupremacy belonged. And my reaſon, without offence to my lord of *Saliſbury*, is this. When the papal authority was aboliſhed, and the queſtion came into parliament, "who now became the head of the church;" the ſearch after him was not carried, where it ſhould have been, into the conſtitution of the kingdom; but, as it was a matter of religion, they miſtook that, which was only an affair of church diſcipline, to be a doctrine of theology; and ſo ſearched, for a ſolution of the queſtion, in the New Teſtament, and Eccleſiaſtical Hiſtory.

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takes to be an error in eccleſiaſtical management. Either way, however, I am not diſpleaſed to find that his main theſis keeps its ground; and that, even according to his own account of the matter, the nation, when it gave up the ſupremacy to the king, was in poſſeſſion of a free and legal conſtitution.

On the whole, you give me leave then to preſume that the conſiderations, now offered to you, afford a reaſonable account of that deſpotic form under which the *Engliſh* government has appeared, from the union of the two roſes down to the ſubverſion of the conſtitution in Charles the Firſt's time.

Other cauſes concurred; but the Reformation was the chief prop and pillar of the imperial dignity, while the conſtitution itſelf remained the ſame, or rather was continually gaining ſtrength even by the neceſſary operation of thoſe

principles on which the Reformation was founded. Religious liberty made way for the entertainment of civil, in all its branches. It could not be otherwiſe. It diſpoſed the minds of men to throw off that ſluggiſhneſs, in which they had ſlumbered for many ages. A ſpirit of inquiry prevailed. Inveterate errors were ſeen through; and prejudices of all ſorts fell off, in proportion to the growth of letters, and the progreſs of reaſon.

THE increaſing trade and wealth of the nation concurred with the temper of the times. The circulation of property brought on a natural relaxation of the feudal ſyſtem. The plan of liberty was extended and enlarged; and the balance of power ſoon fell into the hands of the people. This appeared very plainly from the influence of parliaments, and the daring attacks of many particular members on the higheſt and moſt favoured claims of prerogative. Our kings

were ſenſible of the alteration: but, inſtead of prudently giving way to it, they flew into the oppoſite extreme, and provoked the ſpirit of the times by the very reluctance they ſhewed on all occaſions to comply with it. Every dormant privilege of the crown, every phantom of prerogative, which had kept the ſimpler ages in awe, was now very unſeaſonably conjured up, to terrify all that durſt oppoſe themſelves to encroaching royalty. Lawyers and church-men were employed in this ſervice. And in their fierce endeavour to uphold a tottering throne by falſe ſupports, they entirely overthrew it. The nation was out of all patience to hear the one decree the empire of the kings of *England* to be abſolute and uncontrolable by human law: and the other gave more offence, than they found credit, by pretending that the right of kings to ſuch empire was divine [*l*]. Every artifice indeed of chicane

[*l*] The doctrines of divine right, as propagated by the churchmen of that time in their books and ſermons,

chicane and ſophiſtry was called in to the ſupport of theſe maxims of law and theology.

ſermons, are well known.—Thoſe of the lawyers were ſuch as theſe—It had been alleged on the part of Mr. HAMPDEN, in the great cauſe of ſhip-money, "that by a fundamental policy in the creation of the frame of this kingdom, in caſe the monarch of *England* ſhould be inclined to exact from his ſubjects at his pleaſure, he ſhould be reſtrained, for that he could have nothing from them, but upon a common conſent of parliament." Sir ROBERT BERKELEY, one of the judges of the king's-bench, affirmed—"That the law knows no ſuch king-yoking policy:"—Sir THOMAS TREVOR, one of the barons of the exchequer, "That our king hath as much power and prerogative belonging to him as any prince in Chriſtendom:" The attorney general, Sir JOHN BANKS, "That the king of *England* hath an entire empire; he is an abſolute monarch: nothing can be given to an abſolute prince! but is inherent in his perſon." *State Trials*, vol i. Such was the language of the guardians of the LAW, that temple or ſanctuary, as it has been called, whither the ſubject is to run for ſhelter and protection. Had not Mr. ST. JOHN then much reaſon for ſaying, as he did on that occaſion, "We have the fabric of the temple ſtill; but the Gods, the DII TUTELARES, are gone!" There is the more force and propriety in this cenſure, as it comes from a man who was himſelf of the profeſſion. And an-

theology. But the ſeaſon for religious and civil liberty to prevail over the impotent attempts of each, was at hand. The near approach of the *divine form*

other of the ſame order, the beſt and wiſeſt perhaps that frequented the temple of law in thoſe days, proceeds with a juſt indignation ſtill further—"Theſe men (ſaid Mr. HIDE, in a ſpeech to the lords) have, upon vulgar fears, delivered up the precious forts they were truſted with, almoſt without aſſault; and, in a tame eaſy trance of flattery and ſervitude, loſt and forfeited (ſhamefully forfeited) that reputation, awe, and reverence, which the wiſdom, courage, and gravity of their venerable predeceſſors had contracted and faſtened to their places; and have even rendered that ſtudy and profeſſion, which in all ages hath been, and I hope now ſhall be, of honourable eſtimation, ſo contemptible and vile, that, had not this bleſſed day come [the day of impeachment of the ſix judges], all men would have had that quarrel to the law itſelf, which MARCIUS had to the *Greek* tongue, who thought it a mockery to learn that language, the maſters whereof lived in bondage under others"—Thus theſe eloquent apologiſts for law and liberty. The concluſion is, that though in the great bodies of churchmen and lawyers, ſome will always be found to diſhonour themſelves, there have never been wanting others to do juſtice to the public, and to aſſert, maintain, and preſerve, the dignity of their reſpective profeſſions.

created

created an enthuſiaſm, which nothing could reſiſt. It fruſtrated the generous views even of her firſt and ſincereſt worſhipers. In the career of thoſe ecſtatic orgies, the unhappy king could not prevent his miniſters, firſt, and afterwards the conſtitution itſelf, from falling a victim to that fury, which, in the end, forced off his own head.

Such was the iſſue of this deſperate conflict between prerogative and liberty. The wonder was, that this fatal experience ſhould not have rectified all miſtakes, and have ſettled the government on a ſure and laſting baſis at the Reſtoration. The people were convinced, that nothing more was requiſite to their happineſs, than the ſecure poſſeſſion of their ancient legal conſtitution. The recalled family were not ſo wiſe. And in their attempts to revive thoſe old exploded claims, which had ſucceeded ſo ill with their predeceſſors, they once

more fell from the throne, and left it to the poſſeſſion of that glorious prince whom the greatly-injured nation has now called to it.

THIS then will be conſidered by grateful poſterity as the true æra of *Engliſh* liberty. It was interwoven indeed with the very principles of the conſtitution. It was incloſed in the ancient trunk of the feudal law, and was propagated from it [*m*]. But its operation was weak and partial in that ſtate of

[*m*] This appears even from Mr. HUME's own account of the feudal times; incomparably the beſt part of his *Hiſtory of England*. And it is to be preſumed that, if ſo ingenuous a writer had begun his work at the right end, he would have been led, by the evidence of ſo palpable a truth, to expreſs himſelf more favourably, indeed more conſiſtently, of the *Engliſh* conſtitution. But having, by ſome odd chance, written the hiſtory of the STUARTS firſt, and afterwards of the TUDORS, (in both which he found it for his purpoſe to adopt the notion of a deſpotic independent ſpirit in the *Engliſh* monarchy), he chuſes in the laſt part of his work, which contains the hiſtory of *England from* JULIUS CÆSAR *to* HENRY

of its infancy. It acquired freſh force and vigour with age, and has now at length

HENRY VII. to abide by his former fancy; on this pretence, that, in the adminiſtration of the feudal government, the liberty of the ſubject was incomplete and partial; often precarious and uncertain: a way, in which the learned hiſtorian might prove, that no nation under heaven ever was, or ever will be, poſſeſſed of a FREE CONSTITUTION.

By the FREE CONSTITUTION of the *Engliſh* monarchy, every advocate of liberty, that underſtands himſelf, I ſuppoſe, means, that limited plan of policy, by which the ſupreme legiſlative power (including in this general term the power of levying money) is lodged, not in the prince ſingly, but jointly in the prince and people; whether the *popular* part of the conſtitution be denominated *the king's* or *kingdom's great council*, as it was in the proper feudal times; or *the parliament*, as it came to be called afterwards; or, laſtly, *the two houſes of parliament*, as the ſtyle has now been for ſeveral ages.

To tell us, that this conſtitution has been different at different times, becauſe the regal or popular influence has at different times been more or leſs predominant, is only playing with a word, and confounding *conſtitution* with *adminiſtration*. According to this way of ſpeaking, we have not only had *three or four**, but poſſibly three or fourſcore, different conſtitutions. So long as that great diſtribution of

* Mr. HUME's Hiſt. vol. v. p. 472. 2. ed. 8vo, 1763.

length extended its influence to every part of the political ſyſtem.

HENCEFORWARD, may we not indulge in the expectation that both prince and people will be too wiſe to violate this glorious conſtitution: the only one in the

the ſupreme authority took place (and it has conſtantly and invariably taken place, whatever other changes there might be, from the *Norman* eſtabliſhment down to our times) the nation was always enabled, at leaſt *authorized*, to regulate all ſubordinate, or, if you will, ſupereminent claims and pretenſions. This it effectually did at the *Revolution*, and, by ſo doing, has not created a *new plan of policy*, but perfected the old one. The great MASTER-WHEEL of the *Engliſh* conſtitution is ſtill the ſame; only freed from thoſe checks and reſtraints, by which, under the ſpecious name of *prerogatives*, time and opportunity had taught our kings to obſtruct and embarraſs its free and regular movements.

On the whole, it is to be lamented that Mr. HUME's too zealous concern for the honour of the houſe of STUART, operating uniformly through all the volumes of his hiſtory, has brought diſgrace on a work, which, in the main, is agreeably written, and is indeed the moſt readable *general* account of the *Engliſh* affairs, that has yet been given to the public.

records

records of time, which hath ever attained to the perfection of civil government? All the bleſſings of freedom which can conſiſt with kingly rule, the people have: all the prerogatives of royalty, which can conſiſt with civil freedom, are indulged to the king. From this juſt intermixture of the popular and regal forms, planted together in the earlieſt days, but grown up at length to full maturity, there ariſes a reaſonable hope that the *Engliſh* conſtitution will flouriſh to the lateſt ages; and continue, through them all, the boaſt and glory of our country, and the envy and admiration of the reſt of the world.

MR. SOMERS.

How generous in your lordſhip is this patriot augury of immortality to the *Engliſh* conſtitution! Yet I dare not be ſo ſanguine in my expectations [*n*]. And

[*n*] A great lawyer, however, and one of the ornaments of Mr. SOMERS's own houſe, is not afraid to indulge in theſe generous expectations. In

And Sir JOHN MAYNARD, I ſuſpect, who has ſeen the madneſs of kings and people, in their turns, will hardly expect it from me. It may be ſufficient that we put up our ardent vows to heaven, for the long continuance of it. Leſs than this cannot be diſpenſed with in an honeſt man. Every bleſſing of civil policy is ſecured to us by this new but conſtitutional ſettlement. And may our happy country enjoy it, at leaſt as long as they have the ſenſe to value, and the virtue to deſerve it!

SIR J. MAYNARD.

When theſe fail, our wiſhes, and even prayers themſelves, will hardly preſerve

In a late treatiſe, in which he explains, with exquiſite learning, the genius of the feudal policy, "Theſe principles, ſays he, are the principles of freedom, of juſtice, and ſafety. The *Engliſh* conſtitution is formed upon them. Their reaſon will ſubſiſt, as long as the frame of it ſhall ſtand; and being maintained in purity and vigour, will preſerve it from the uſual mortality of government." *Conſiderations on the Law of Forfeiture*, 3d ed. Lond. 1748.

us. Vice and folly, as you ſay, may do much towards defeating the purpoſes of the beſt government. What effect theſe may have, in time, on the *Engliſh* liberty, I would not, for the omen's ſake, undertake to ſay. You, my lord, and Mr. Somers (who are ſo much younger men) may be able, hereafter, to conjecture with more certainty of its duration. It is enough for me that I have lived to ſee my country in poſſeſſion of it.

The End of the Second Volume.

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